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IN THE

Supreme Court of the United States

No. 148

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties,
Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and JAMES DUVALL,
for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,

A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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Evansville, Indiana,
June 15th, 1942.

U. S. Law Printing Co., Phone Lakeview 6581, Chicago, Illinois

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petitioners respectfully show:

Summary and Short Statement of Matter Involved.

This is an action for an injunction, originally instituted and tried in the Superior Court of Vanderburgh County,

Indiana. The petitioners herein were the plaintiffs in the trial court, and by their complaint (Rec. pp. 1 to 9) alleged, and upon trial supported said allegations by proof (Rec. pp. 28 to 55) that they were employed by the Louisville and Nashville Railroad Company as switchmen and yardmen under a written collective labor agreement, through which they held certain seniority rights, together with the exclusive right to perform all switching and yard services in the yards of said Railroad in Evansville, Indiana (Rec. pp. 140; 47). That they were members of the Brotherhood of Railroad Trainmen, and as such were entitled to certain rights, contractual in nature, afforded them by the Constitution and By-Laws (Rec. pp. 29 to 35) of that organization. Upon August 1st, 1935, the Chicago and Eastern Illinois Railway Company closed its station in the City of Evansville, and thereafter availed themselves of the use of the Louisville and Nashville Railroad Company's station and yards in the City of Evansville for the arrival and departure of certain trains theretofore using only the Chicago and Eastern Illinois Railway Company's station (Rec. p. 45). The evidence discloses that prior to August 1st, 1935, the Chicago and Eastern Illinois Railway Company, the New York Central Railroad Company, and the Illinois Central Railroad Company all used the yards and depot of the Louisville and Nashville Railroad Company with reference to other trains, and upon these trains the Louisville and Nashville Railroad Company yardmen, the petitioners herein, had performed all switching and yard operations (Rec. p. 40). Following the closing of the Chicago and Eastern Illinois Railway Company's Station, their switchmen and yardmen, the respondents herein, who were also members of the Brotherhood of Railroad Trainmen, asserted a right to follow their switching and yard services into the Louisville and Nashville Railroad Company's yards (Rec. p. 41). The peti-

tioners would not accede to this request, and the relationship of these two groups of workmen being contractual in character by virtue of their membership in the same labor organization, this dispute was referred to the regularly constituted agencies and tribunals of that organization for determination and settlement. The local chairmen were called in, and being unable to agree, the President of the Brotherhood, A. F. Whitney, assigned Vice-President Zanger to investigate the dispute, and report, which he did, recommending that the claim of the Chicago and Eastern Illinois men be upheld. This recommendation was adopted by the President (Rec. p. 63) (Defendants' Exhibit 1) and the Louisville and Nashville men, following the fixed course of procedure set up by the Constitution of this organization, perfected an appeal from said ruling to the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63) (Defendants' Exhibit 1). The Constitution of the Brotherhood of Railroad Trainmen provided that "Such decision (of the Board of Appeals) shall be the final adjudication of any and all rights and questions included in the appeal." (Rec. p. 31) (Plaintiffs' Exhibit 1). After a full hearing in which all parties participated, this tribunal of this organization entered its ruling, supporting the position of the Louisville and Nashville yardmen, and reversing the ruling of President Whitney (Rec. p. 63) (Defendants' Exhibit 1). This was upon May 5th, 1938. This decision, finally adjudicating this controversy, was thereafter acquiesced in by all concerned, including the respondents herein, until May and June, 1939 (Rec. p. 63) (Defendants' Exhibit 1) when a convention of this organization passed an *ultra vires* and void resolution, reversing the decision of the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63) (Defendants' Exhibit 1). However, nothing fur-

ther was done until the summer and fall of 1940, when an effort was made to bring the Chicago and Eastern Illinois yardmen into the Louisville and Nashville yards to displace Louisville and Nashville yardmen (Rec. pp. 74 to 85) and this action for an injunction to prevent the respondents from interfering with the petitioners' right to seniority, to the exclusive right to work in the Louisville and Nashville yards, and to secure to the petitioners the benefits of their favorable final decision of the Board of Appeals of the Brotherhood of Railroad Trainmen was instituted (Rec. p. 1). The trial court at the conclusion of the case entered a permanent injunction in favor of the petitioners, granting them the relief set out above (Rec. pp. 25 to 27) and respondents thereafter appealed to the Supreme Court of Indiana. By a written opinion, said Court reversed the lower court, holding that the lower court was without power to interfere with the internal affairs of a labor organization by granting the injunction entered, and remanded the cause for a new trial (Rec. pp. 98 to 103) (38 N. E. 2nd, 239). A petition for rehearing was duly filed (Rec. p. 103) and upon the 21st day of January, 1942, the petition for rehearing of the petitioners was by the Supreme Court of Indiana denied (Rec. p. 104).

Statement of Jurisdiction.

The Supreme Court of the United States has jurisdiction to review the decision of the Supreme Court of Indiana in this cause on a Writ of Certiorari in that the Supreme Court of Indiana has decided a federal question of substance not theretofore determined by the Supreme Court of the United States, and has decided it in a way not in in accord with the applicable decisions of the Supreme Court of the United States.

That said substantial federal question is: That the Supreme Court of Indiana by its decision and opinion denies

to the petitioners the rights secured them by the Fourteenth Amendment of the Constitution of the United States, and particularly Section 1 of the same, which is in the words and figures as follows, to-wit:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
>
> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That said decision and holding (Rec. pp. 98 to 103) deprives the petitioners of property without due process of law as follows, to-wit: The record reveals that under the pleadings and the controlling facts in this case, which are not in dispute, the petitioners had a right of action for injunction. That the Supreme Court of Indiana by its decision and holding denies to the petitioners that right of action and denies to the petitioners a remedy in said cause of action, and denies to the petitioners a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction in the State of Indiana.

That said federal question is substantial for the reason that it affects the rights of hundreds of thousands of workmen in the United States, who are individual members of labor unions or like organizations, in that it denies them a remedy in a court of competent jurisdiction for the protection of their individual rights against the arbitrary, dictatorial and *ultra vires* acts of such unions or organizations, and denies them a judicial determination of a cause of action involving such rights.

That said federal question was raised by the petitioners herein by their petition for rehearing filed in the Supreme Court of Indiana upon the 13th day of January, 1942 (Rec. pp. 103 to 104), and denied upon the 21st day of January, 1942 (Rec. p. 104).

That said federal question was raised for the first time upon petition for rehearing in the Supreme Court of Indiana for the reason that the decision of the Supreme Court of Indiana supplied a new and unexpected basis for a claim by the petitioners of the denial of a federal right. The denial by the Supreme Court of Indiana of petitioners' right of action for injunction, the denial of the petitioners' right to a remedy in said cause of action, and the denial to the petitioners of a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction of the State of Indiana was not within the issues and questions presented by the pleadings in said cause of action, namely the complaint (Rec. pp. 1 to 9) and by the answer of the respondents thereto (Rec. pp. 12 to 23), or the reply of the petitioners thereto (Rec. pp. 22 to 23). That said pleadings reveal that the issue of the right of the trial court to judicially determine the controversy, and to give petitioners a remedy in said cause of action was not raised by the pleadings, nor was the issue of the trial court's right to judicially determine the cause of action raised in the trial court, and neither was said issue raised in the Supreme Court of Indiana, nor was such issue presented to that court for determination. And the respondents as appellants had not theretofore in the Supreme Court of Indiana urged or contended that the courts of Indiana were without jurisdiction or right to determine judicially petitioners' right of action for injunction. The opinon of the Supreme Court

in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) sets out the contention of both the petitioners as appellees, and respondents as appellants in this cause of action, and in this cause prior to the opinion of the Supreme Court of Indiana, it had not been contended or urged that the courts of Indiana were without power or right to judicially determine the controversy between the petitioners and the respondents, and to construe the Constitution of the Brotherhood of Railroad Trainmen, to determine the rights of the respective parties hereto under such Constitution, which was a contract between these parties.

Questions Presented.

The question presented in this petition is whether the Supreme Court of Indiana can deny to these petitioners the right to redress, protection and remedy in a court of competent jurisdiction against the threatened invasion and violation of their rights. This petition questions the right of the Supreme Court of Indiana to forbid a judicial determination of petitioners' rights, which is the effect of the law of this case established by the opinion of said court, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) by which said court reversed the lower court in this cause. As a corollary to the fundamental question of this petition is the proposition that the action of the Supreme Court of Indiana should be reversed, and the action of the lower court affirmed, so that the law of this case be properly established, that petitioners be granted their right to a remedy and to a judicial determination of the issues of their cause of action, and further that the action of the lower court in entering a permanent injunction against the respondents be in all things affirmed.

For a determination of the above questions, this petition makes it necessary that this court determine the right of

workmen employed by a railroad company under a collective labor agreement, by which they hold seniority, the right to work and the right to work under certain favorable working conditions, to seek an injunction in a proper court, to protect them and others similarly situated against the menacing encroachment upon their said rights by trainmen and yardmen of another railroad. The determination of the above questions further involves a determination of the rights afforded petitioners by virtue of their membership in the Brotherhood of Railroad Trainmen, and their relationship with the respondents, also members of the same organization. By their said membership in said organization, both the petitioners and the respondents contracted to be bound by a system of arbitration of disputes such as arose between the petitioners and respondents over the closing of the Chicago and Eastern Illinois station in Evansville, Indiana, which said system of arbitration was fixed and determined by the Constitution of that organization. Here these petitioners had submitted this dispute for determination and arbitration to the duly constituted tribunal of the Brotherhood of Railroad Trainmen created by its Constitution and after a hearing, participated in by all concerned, including respondents, a decision, final in character was entered by the Board of Appeals of the Brotherhood of Railroad Trainmen in favor of the petitioners (Rec. pp. 63 to 71). This petition presents the right of these petitioners to have a judicial determination of their right to the benefits of that favorable decision of the Board of Appeals of the Brotherhood of Railroad Trainmen, and further, that a judicial determination and remedy upon the basis of the undisputed facts of this cause of action should be in favor of petitioners, and hence this Court should affirm the action of the trial court.

Proceedings in Trial Court.

This action was commenced by the filing of a complaint in one paragraph by the petitioners against the respondents (Rec. pp. 1 to 9). There was an answer by the Louisville and Nashville Railroad Company (Rec. pp. 12, 13). There was an answer in three paragraphs by the other respondents (Rec. pp. 13 to 22) to which petitioners addressed a reply (Rec. pp. 22, 23). The cause was dismissed as to Benjamin Wham, Trustee of the Chicago and Eastern Illinois Railway Company, and the Chicago and Eastern Railway Company (Rec. p. 11). Upon the issues thus formed, the cause was submitted for trial and resulted in the trial court entering a permanent injunction as prayed by the petitioners against the respondents, restraining the respondents from interfering with petitioners' right to seniority, and the right to work in the Evansville yards of the Louisville and Nashville Railroad Company (Rec. pp. 15 to 27). A motion for new trial was filed and denied. An appeal was prayed and perfected to the Supreme Court of Indiana (Rec. pp. 24 to 27).

The Decision of the Supreme Court of Indiana.

The decision of the Supreme Court of Indiana in this cause is set out in the record, pages 98 to 103, and is reported in 38 N. E. 2nd, at page 239. The opinion of said court states the facts as presented to the court below, and to said Supreme Court of Indiana, as follows:

> "This is a controversy between members of the Brotherhood of Railroad Trainmen. The railroad companies have no interest in the result. The appellees began the action on behalf of themselves and all other switchmen and yardmen employed by the Louisville and Nashville Railroad Company in Vanderburgh County, Indiana. The purpose of the suit is to prevent the employment of certain members of the

brotherhood in the switching yards operated by the Louisville and Nashville Railroad Company in Vanderburgh County. There was a permanent injunction in favor of the plaintiffs. * * *

"The controlling facts are not in dispute. Both railroad companies have contracts with the Brotherhood of Railroad Trainmen providing for seniority rights for employees. By the terms of this agreement, members of the brotherhood employed by the Louisville and Nashville Railroad Company were entitled to seniority rights in the Louisville and Nashville Railroad Company yards, and members of the brotherhood employed by the Chicago and Eastern Illinois Railway Company were entitled to seniority rights in the yards of that company. Both railroad companies operate trains into the City of Evansville. Prior to 1935 both railroad companies maintained depots. Some of the Chicago and Eastern Illinois Railway Company trains ended their run at Evansville and returned north, while others were through trains which continued south from Evansville on the Louisville and Nashville Railroad. Prior to 1935, the Chicago and Eastern Illinois switching of these trains was conducted in its own yards. In 1935 the Chicago and Eastern Illinois Railway Company depot was closed and all the trains were run into the Louisville and Nashville Railroad Company depot, and all train switching was thereafter done in the Louisville and Nashville Railroad Company switching yards.

"The Louisville and Nashville yardmen claimed the privilege of doing all of the switching in the Louisville and Nashville yards by reason of their claim of exclusive seniority privileges under the brotherhood contract with the railroad company. The Chicago and Eastern Illinois yardmen claimed the right to do a certain part of the switching upon the theory that there had been a "merger" within the meaning of article "G" of the Declaration of Policy of the Brotherhood of Railroad Trainmen, and that their seniority rights were protected, and that they were entitled to

participate in the switching of the merged operation. This controversy was submitted to the general chairman of the brotherhood for each railroad system, who were unable to agree, and the matter was, under the rules of the brotherhood, referred to the president of the brotherhood, who sustained the contention of the Chicago and Eastern Illinois yardmen. Thereupon the Louisville and Nashville yardmen appealed from the decision of the president to the board of appeals of the brotherhood. The board of appeals reversed the decision of the president, sustaining the contention of the Louisville and Nashville yardmen. At the next meeting of the grand lodge, the supreme power in the brotherhood, the decision of the board of appeals was reversed, and a decision made in favor of the Chicago and Eastern Illinois yardmen."

The Court states the issues presented to the trial court and to the Supreme Court of Indiana as follows:

"The case as presented to the court below and to this court depends for its solution entirely upon an interpretation and construction of the constitution and laws of the union respecting the jurisdiction of various union agencies to decide the questions presented by the controversy and the finality of these decisions. It is contended by the appellants that the controversy submitted to the president of the brotherhood required nothing more than an interpretation of the laws of the brotherhood; that the sole power to interpret the laws is vested in the president, subject only to an appeal to the board of directors and then to the grand lodge, and that therefore the board of appeals, to which an appeal was taken from the president's order, had no power or jurisdiction to intervene. The appellees contend that the controversy involved a question of fact to be decided by the president; that the appeal from his decision was therefore properly taken to the board of appeals; that by the provisions of the constitution of the brotherhood, the decision of the

board of appeals is final. But the appellants contend that, even though the appeal was properly taken to the board of appeals, section 6 of the constitution of the brotherhood provides: 'The Grand Lodge has exclusive jurisdiction over all subjects pertaining to the Brotherhood, and its enactments and decisions upon all questions are the supreme law of the Brotherhood. The Grand Lodge may hear and determine all matters of controversy which may be brought before it by appeal or otherwise. * * *' The appellees contend that this provision is nullified, in so far as controversies are concerned, by the constitutional provisions later adopted providing for decisions by the board of appeals, and that they shall be final."

Upon the foregoing statement of facts and the statement of issues presented to the trial court and the Supreme Court of Indiana, the latter court erroneously reversed the lower court with instructions to sustain a motion for new trial. In so doing, said court in its said opinion, by establishing the law of this cause of action, precludes the petitioners from seeking relief in the courts of Indiana for the threatened invasion and encroachment upon their rights, namely, the right to seniority and work, and their right to the benefit of the favorable final decision of the Board of Appeals of the Brotherhood of Railroad Trainmen. The Supreme Court of Indiana by its said opinion holds erroneously that the questions presented involve an interpretation and construction of the constitution and by-laws of the Brotherhood of Railroad Trainmen, and that the courts will not review the correctness of the interpretation placed upon the constitution by its duly authorized tribunals. The effect of this opinion is to deny to the petitioners a remedy in a court of competent jurisdiction, and therefore the Supreme Court of Indiana has

denied to the petitioners due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States. That said federal question was directly presented to the Supreme Court of Indiana upon petition for a rehearing as herein stated, and was denied.

Reasons Relied Upon for the Allowance of Writ.

A substantial federal question of great importance, not only to the petitioners herein, but to every individual member of a labor organization in the United States, is presented by this petition. This petition directly presents the right of an individual member of a labor organization to seek redress or remedy in a proper court for the threatened and actual invasion of his individual rights as a workman to seniority, to the right to work, to the right to the benefits secured by him by his union membership by the constitution and by-laws of such organization against the arbitrary, dictatorial and *ultra vires* acts of the organization itself. The Writ of Certiorari herein prayed for should be granted petitioners for the reason that they have been denied due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States in that the Supreme Court of Indiana has denied them a judicial determination of their cause of action and has precluded them from having such a judicial determination of their cause of action.

Wherefore, the petitioners herein respectfully pray that a Writ of Certiorari may issue out of and under the seal of this Court, directed to the Supreme Court of the State

of Indiana, to the end that the judgment of the Supreme Court of Indiana may be reviewed and reversed by this honorable Court.

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by said Railroad Company in the Same Capacity as the Named Parties,
Petitioners,

By THEODORE LOCKYEAR,
ELMER Q. LOCKYEAR,
CHARLES J. EICHEL,
Attorneys for Petitioners.

Dated at Evansville, Indiana,
June 15th, 1942.

PETITIONER'S

BRIEF

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U. S. Law Printing Company, 2817 N. Halsted St., Chicago, Ill.

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

1.

The Opinion.

The petitioners herein by a petition for a writ of certiorari, seek a review of a judgment and opinion of the Supreme Court of the State of Indiana in this cause. The

opinion of the Supreme Court of Indiana will be officially reported in the Indiana Reports, and said opinion has been reported in 38 N. E. 2nd, 239, and the same is set out in the printed record, pages 98 to 103.

2.

Statement of the Grounds Upon Which the Jurisdiction of the Supreme Court of the United States Is Invoked.

Jurisdiction in this cause is invoked under Section 237 of the Judicial Code of the United States as amended, Federal Code Annotated, Title 28, Section 344 (b), which provides:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by appeal, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question * * * any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, * * * and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. * * *"

Specifically, petitioners contend that by the judgment and opinion of the Supreme Court of Indiana in this cause, they have been denied due process of law as guaranteed by Section 1 of the Fourteenth Amendment of the Constitution of the United States, which is in the words and figures as follows, towit:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That said Federal question was raised in the first instance in the Supreme Court of Indiana by a petition for rehearing (Rec. pp. 103, 104) filed in said cause upon the 13th day of January, 1942, and denied by said court upon the 21st day of January, 1942. That said petition sought a rehearing in said cause from an adverse judgment and opinion of said court of December 29th, 1941 (Rec. pp. 98 to 103) (38 N. E. 2nd, 239). That said petition for rehearing raised said Federal question in the following manner:

"That said decision and holding deprives the Appellees of property without due process of law as follows, towit: The record reveals that under the pleadings and the controlling facts in this case, which are not in dispute, the Appellees had a right of action for injunction. That this Court by its decision and holding denies the Appellees that right of action, and denies to the Appellees a remedy in said cause of action, and denies to the Appellees a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction of the State of Indiana.

"Wherefore, Appellees pray the Court to grant a rehearing herein." (Petition for rehearing, Rec. pp. 103, 104).

That said Supreme Court of Indiana denied said petition for a rehearing by said order of January 21st, 1942, which is as follows:

"Come now the parties by counsel and the court, being advised in the premises, denies the appellees' petition for a rehearing heretofore filed herein.

"(Signed) Curtis G. Shake, Chief Justice." (Rec. p. 104).

That said decision and holding (Rec. pp. 98 to 103) (38 N. E. 2nd, 239) deprives the petitioners of property without due process of law as follows, towit: The entire record reveals that under the pleadings and controlling facts of this case, which are not in dispute, the petitioners had a right of action for injunction. That the Supreme Court of Indiana by its decision and holding denies to the petitioners any remedy in said cause of action, and denies to the petitioners a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction in the State of Indiana.

The Federal question herein involved is substantial for the reason that it affects the rights of hundreds of thousands of workmen in the United States who are individual members of labor unions or like organizations, in that it denies them individually a remedy in a court of competent jurisdiction for the protection of their individual rights against the arbitrary, dictatorial and *ultra vires* acts of such unions, officials, or organizations, and denies a judicial determination or a remedy in a cause of action involving such rights.

That said Federal question was first raised upon petition for a rehearing in the Supreme Court of Indiana upon the 13th day of January, 1942 (Rec. pp. 103, 104) for the reason that the decision of the Supreme Court of Indiana in this cause (Rec. pp. 98 to 103) (38 N. E. 2nd, 239) supplied a new and unexpected basis for a claim by the petitioners of a denial of a federal right. The denial by the Supreme Court of Indiana of petitioners' right of action for injunction, the denial of the petitioners' right to a

remedy in said cause of action, and the denial to the petitioners of a judicial determination of their rights involved in said cause of action in a court of competent jurisdiction of the State of Indiana was not within the issues and questions presented by the pleadings in said cause of action, namely the complaint (Rec. pp. 1 to 9) and by the answer of the respondents thereto (Rec. pp. 12 to 23), or the reply of the petitioners thereto (Rec. pp. 22 to 23). That said pleadings reveal that the issue of the right of the trial court to judicially determine the controversy, and to give petitioners a remedy in said cause of action was not raised by the pleadings, nor was the issue of the trial court's right to judicially determine the cause of action raised in the trial court, and neither was said issue raised in the Supreme Court of Indiana, nor was such issue presented to that court for determination. And the respondents as appellants had not theretofore in the Supreme Court of Indiana urged or contended that the courts of Indiana were without jurisdiction or right to determine judicially petitioners' right of action for injunction. The opinion of the Supreme Court in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) sets out the contention of both the petitioners as appellees, and respondents as appellants in this cause of action, and in this cause prior to the opinion of the Supreme Court of Indiana, it had not been contended or urged that the courts of Indiana were without power or right to judicially determine the controversy between the petitioners and the respondents, and to construe the Constitution of the Brotherhood of Railroad Trainmen, to determine the rights of the respective parties hereto under such Constitution, which was a contract between these parties.

As stated above, the judgment and opinion of the Supreme Court of Indiana in this cause supplied a new and

unexpected basis for a claim by petitioners of the denial of a Federal right, and thereupon said Federal question was directly raised by the petition for rehearing (Rec. pp. 103, 104) and directly passed upon by said court (Rec. p. 104), and therefore said Federal question was raised at such a time and in such a manner as to confer jurisdiction upon this Court upon this petition for writ of certiorari. As sustaining the jurisdiction of this Court under the circumstances above disclosed, the following cases are in point:

Great Northern R. Co. v. *Sunburst Oil & Ref. Co.,* 287 U. S. 358; 77 L. Ed. 360; 53 S. Ct. 145; 85 A. L. R. 254.

Saunders v. *Shaw,* 244 U. S. 317; 61 L. Ed. 1163; 37 S. Ct. 638.

Brinkerhoff-Faris Trust & Sav. Co. v. *Hill,* 281 U. S. 673; 74 L. Ed. 1107; 50 S. Ct. 451.

Herndon v. *Georgia,* 295 U. S. 441; 79 L. Ed. 1530; 55 S. Ct. 794. Rehearing denied in 296 U. S. 661; 80 L. Ed. 471; 56 S. Ct. 82.

The petition for writ of certiorari herein, with the within supporting brief, together with the transcript and the printed record were duly filed with the Clerk of the Supreme Court of the United States upon the 15th day of June, 1942, the Supreme Court of the United States having theretofore by its order of the 13th day of April, 1942, extended the time for the filing of said petition to the 21st day of May, 1942 (Rec. p. 105), and having by an order of the 11th day of May, 1942, further extended said time to and including the 20th day of June, 1942 (Rec. p. 105).

3.

Statement of the Case.

This is an action for an injunction, originally instituted and tried in the Superior Court of Vanderburgh County, Indiana. The petitioners herein were the plaintiffs in the trial court, and by their complaint (Rec. pp. 1 to 9) alleged, and upon trial supported said allegations by proof (Rec. pp. 28 to 55) that they were employed by the Louisville and Nashville Railroad Company as switchmen and yardmen under a written collective labor agreement, through which they held certain seniority rights, together with the exclusive right to perform all switching and yard services in the yards of said Railroad in Evansville, Indiana (Rec. pp. 140, 47). That they were members of the Brotherhood of Railroad Trainmen, and as such were entitled to certain rights, contractual in nature, afforded them by the Constitution and By-Laws (Rec. pp. 29 to 35) of that organization. Upon August 1st, 1935, the Chicago and Eastern Illinois Railway Company closed its station in the City of Evansville, and thereafter availed themselves of the use of the Louisville and Nashville Railroad Company's station and yards in the City of Evansville for the arrival and departure of certain trains theretofore using only the Chicago and Eastern Illinois Railway Company's station (Rec. p. 45). The evidence discloses that prior to August 1st, 1935, the Chicago and Eastern Illinois Railway Company, the New York Central Railroad Company, and the Illinois Central Railroad Company all used the yards and depot of the Louisville and Nashville Railroad Company with reference to other trains, and upon these trains the Louisville and Nashville Railroad Company yardmen, the petitioners herein, had performed all switching and yard operations (Rec. p. 40). Following the closing of the Chicago and Eastern Illinois Railway Com-

pany's Station, their switchmen and yardmen, the respondents herein, who were also members of the Brotherhood of Railroad Trainmen, asserted a right to follow their switching and yard services into the Louisville and Nashville Railroad Company's yards (Rec. p. 41). The petitioners would not accede to this request, and the relationship of these two groups of workmen being contractual in character by virtue of their membership in the same labor organization, this dispute was referred to the regularly constituted agencies and tribunals of that organization for determination and settlement. The local chairmen were called in, and being unable to agree, the President of the Brotherhood, A. F. Whitney, assigned Vice-President Zanger to investigate the dispute, and report, which he did, recommending that the claim of the Chicago and Eastern Illinois men be upheld. This recommendation was adopted by the President (Rec. p. 63) (Defendants' Exhibit 1) and the Louisville and Nashville men, following the fixed course of procedure set up by the Constitution of this organization, perfected an appeal from said ruling to the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63 (Defendants' Exhibit 1). The Constitution of the Brotherhood of Railroad Trainmen provided that "Such decision (of the Board of Appeals) shall be the final adjudication of any and all rights and questions included in the appeal." (Rec. p. 31) (Plaintiffs' Exhibit 1). After a full hearing in which all parties participated, this tribunal of this organization entered its ruling, supporting the position of the Louisville and Nashville yardmen, and reversing the ruling of President Whitney (Rec. p. 63) (Defendants' Exhibit 1). This was upon May 5th, 1938. This decision, finally adjudicating this controversy, was thereafter acquiesced in by all concerned, including the respondents herein, until May and June, 1939 (Rec. p. 63) (Defendants' Exhibit 1) when a convention of this organ-

ization passed an *ultra vires* and void resolution, reversing the decision of the Board of Appeals of the Brotherhood of Railroad Trainmen (Rec. p. 63) (Defendants' Exhibit 1). However, nothing further was done until the summer and fall of 1940, when an effort was made to bring the Chicago and Eastern Illinois yardmen into the Louisville and Nashville yards to displace Louisville and Nashville yardmen (Rec. pp. 74 to 85) and this action for an injunction to prevent the respondents from interfering with the petitioners' right to seniority, to the exclusive right to work in the Lousiville and Nashville yards, and to secure to the petitioners the benefits of their favorable final decision of the Board of Appeals of the Brotherhood of Railroad Trainmen was instituted (Rec. p. 1). The trial court at the conclusion of the case entered a permanent injunction in favor of the petitioners, granting them the relief set out above (Rec. pp. 25 to 27) and respondents thereafter appealed to the Supreme Court of Indiana. By a written opinion, said Court reversed the lower court, holding that the lower court was without power to interfere with the internal affairs of a labor organization by granting the injunction entered, and remanded the cause for a new trial (Rec. pp. 98 to 103) (38 N. E. 2nd, 239). A petition for rehearing was duly filed (Rec. p. 103) and upon the 21st day of January, 1942, the petition for rehearing of the petitioners was by the Supreme Court of Indiana denied (Rec. p. 104).

4.

Specification of Errors Intended to Be Urged.

The question presented in this petition is whether the Supreme Court of Indiana can deny to these petitioners the right to redress, protection and remedy in a court of competent jurisdiction against the threatened invasion and violation of their rights. This petition questions the

right of the Supreme Court of Indiana to forbid a judicial determination of petitioners' rights, which is the effect of the law of this case established by the opinion of said court, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) by which said court reversed the lower court in this cause. As a corollary to the fundamental question of this petition is the proposition that the action of the Supreme Court of Indiana should be reversed, and the action of the lower court affirmed, so that the law of this case be properly established, that petitioners be granted their right to a remedy and to a judicial determination of the issues of their cause of action, and further that the action of the lower court in entering a permanent injunction against the respondents be in all things affirmed.

For a determination of the above question, this petition makes it necessary that this court determine the right of workmen employed by a railroad company under a collective labor agreement, by which they hold seniority, the right to work and the right to work under certain favorable working conditions, to seek an injunction in a proper court, to protect them and others similarly situated against the menacing encroachment upon their said rights by trainmen and yardmen of another railroad. The determination of the above questions further involves a determination of the rights afforded petitioners by virtue of their membership in the Brotherhood of Railroad Trainmen, and their relationship with the respondents, also members of the same organization. By their said membership in said organization, both the petitioners and the respondents contracted to be bound by a system of arbitration of disputes such as arose between the petitioners and respondents over the closing of the Chicago and Eastern Illinois station in Evansville, Indiana, which said system of arbitration was fixed and determined by the Constitution of that organization. Here these petitioners had submitted

this dispute for determination and arbitration to the duly constituted tribunal of the Brotherhood of Railroad Trainmen created by its Constitution and after a hearing, participated in by all concerned, including respondents, a decision, final in character was entered by the Board of Appeals of the Brotherhood of Railroad Trainmen in favor of the petitioners (Rec. pp. 63 to 71). This petition presents the right of these petitioners to have a judicial determination of their right to the benefits of that favorable decision of the Board of Appeals of the Brotherhood of Railroad Trainmen, and further, that a judicial determination and remedy upon the basis of the undisputed facts of this cause of action should be in favor of petitioners, and hence this Court should affirm the action of the trial court.

ARGUMENT.

Summary of Argument.

Point A. The Supreme Court of the United States has jurisdiction to pass upon the Federal question presented by the petition for writ of certiorari herein.

Point B. The constitutional guarantee to due process of law includes the right of petitioners to a judicial determination of their right of action, their right to a remedy.

Point C. The petitioners in this cause have involved such vested property rights as will justify the interference of a court of equity for their protection by injunction against the wrongful invasion thereof by respondents.

Point D. The petitioners had a cause of action requiring a judicial determination.

Point E. The opinion and judgment of the Supreme Court of Indiana in this cause denies petitioners due process of law.

Point A.

The Federal question raised in this cause of action was raised in the Supreme Court of Indiana in sufficient time and in such a manner as to make the facts and circumstances of this case within the recognized exception to the rule that the Federal question must be distinctly raised and ruled upon in the state court, and that presentation of such question upon petition for rehearing is too late. Here the opinion and judgment of the Supreme Court of Indiana supplied a new and unexpected ground for the claim of a denial of a Federal constitutional right. It had not been anticipated that the right to due process of law

would be denied to the petitioners. This places the instant case within the exception laid down by Judge Cardozo in the case of *Great Northern R. Co.* v. *Sunburst Oil & Ref. Co.*, 287 U. S. 358; 77 L. Ed. 360; 53 S. Ct. 145; 85 A. L. R. 254, wherein he said:

> "The rule, general as it is, does not extend to cases where the constitutional question, however tardily raised, is considered and decided * * * nor does it apply where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a Federal right."

To the same effect is the case of *Herndon* v. *The State of Georgia*, 295 U. S. 441; 79 L. Ed. 1530; 55 S. Ct. 794; Rehearing denied in 296 U. S. 661; 80 L. Ed. 471; 56 S. Ct. 82:

> "There is no doubt that the Federal claim was timely if the ruling of the state court could not have been anticipated and a petition for rehearing presented the first opportunity for raising it."

Judge Brandeis in *Brinkerhoff-Faris Trust and Sav. Co.* v. *Hill*, 281 U. S. 673; 74 L. Ed. 1107; 50 S. Ct. 451, stated:

> "The additional Federal claim thus made was timely since it was raised at the first opportunity."

A further statement of this rule is contained in the case of *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313; 74 L. Ed. 870; 50 S. Ct. 326, wherein the following appears:

> "It is well settled that this Court will not consider questions that were not properly presented for decision in the highest court of the State. Ordinarily it will not consider contentions first made in a petition to the state court for a rehearing, where the petition is denied without more * * * but here the company at the first opportunity invoked the protection of the Federal Constitution and statute. It could not earlier have

> availed the section as violative of the Constitution and laws of the United States. * * * Upon the facts disclosed by this record, it is clear that the appellant sufficiently raised in the highest court of the state the Federal questions here presented, and is entitled to have them considered."

From the facts stated herein in the Statement of Jurisdiction, it clearly appears that the Federal question presented by the petition for rehearing was ruled upon in substance. The denial of the Federal right claimed clearly appears from the opinion. This is a question of fact to be determined from the record. The inquiry necessary for the Supreme Court of the United States to make is as stated in the case of *Norris* v. *The State of Alabama,* 294 U. S. 587; 79 L. Ed. 1074; 55 S. Ct. 579:

> "When a Federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms, but also whether it was denied in substance and effect."

A reference to the opinion of the Supreme Court of Indiana in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) reveals that this cause was decided by said court in a manner and upon grounds not contended for by either of the parties, as will herein be shown. That said decision and judgment of said court denied to these petitioners due process of law, guaranteed to them by the Constitution of the United States. The petitioners timely and distinctly raised said Federal question by their petition for rehearing. The presentation of said Federal question being the sole ground upon which rehearing was prayed by the petitioners, the denial of said petition by the Supreme Court of Indiana constituted a distinct ruling upon said Federal question.

Point B.

By the opinion and judgment of the Supreme Court of Indiana in this cause, 38 N. E. 2nd, 239 (Rec. pp. 98 to 103) the Supreme Court of Indiana held and established as the law of this case that this being a controversy between members of the same labor organization, namely, the Brotherhood of Railroad Trainmen, and the questions presented involved the interpretation of the jurisdiction of various boards, tribunals and bodies of that organization, the courts of Indiana were powerless to interfere in the internal affairs of said labor organization, and therefore denied specifically to these petitioners a remedy in their said cause of action; denied to the petitioners a judicial determination of their cause of action. The effect of said judgment and opinion of the Supreme Court of Indiana is that petitioners have no right to seek redress in a court of the State of Indiana for the protection of their rights. This is a denial to the petitioners of due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The denial of due process of law as guaranteed by the constitutional provisions referred to can arise from judicial action, as well as from legislative enactment. Where one has a cause of action entitling him to a remedy, the denial of that remedy constitutes a denial of due process of law. In this position the petitioners find support in the decided cases. The rule upon which petitioners rely is aptly stated in the case of *Brinkerhoff-Faris Trust and Sav. Co.* v. *Hill*, 281 U. S. 673; 74 L. Ed. 1107; 50 S. Ct. 451, wherein this Court speaking through Mr. Justice Brandeis stated:

> "But while it is for the state courts to determine the adjective as well as the substantive law of the state, they must in so doing accord the parties due

process of law. *Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy unless there is or was afforded to him some real opportunity to protect it.*"

Upon this issue we are not confronted with a question involving "procedural due process." Nor is an issue involved presenting the right of a legislative branch of government to substitute or change a remedy. We are confronted with a situation in which the Supreme Court of Indiana, by denying to petitioners any remedy in their cause of action, takes away the cause of action.

16 Corpus Juris Secundum, page 1241, section 616 states:

> "Due process of law requires a judicial determination of the issues."

Section 611 of the same work, at page 1221 states:

> "The Constitutional guarantees of due process of law do not require that parties shall be entitled to any particular form of action or any particular method of procedure for the protection of rights or redress of wrongs. *These guarantees do require, however, that the substance of property rights be preserved, that the courts accord to the parties due process in determining adjective and substantive law, and that some adequate and appropriate remedy be afforded for the vindication of personal and property rights.*"

Volume 12, American Jurisprudence, section 665, page 352 is as follows:

> "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to

> protect it. A law which operates in effect to make remediless injury to an employer's business by striking employees and others, through concerted action in picketing, displaying banners * * * deprives the owner of the business and the premises of his property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution."

In section 583 at page 282 of the same work, it is said: "It is not within the power of the state to take away all remedy for the enforcement of a right."

This rule is perhaps best stated in the language of the dissenting opinion of Mr. Justice Bradley in the case of *Campbell* v. *Holt,* 115 U. S. 620; 29 L. Ed. 483, 488, which statement has been generally accepted by the courts of last resort of this country as a proper statement of the law:

> "Remedies are the life of rights, and are equally protected by the Constitution. Deprivation of a remedy is equivalent to a deprivation of the right which it is intended to vindicate, unless another remedy exists or is substituted for that which is taken away. This court has frequently held that to deprive a man of a remedy for enforcing a contract is itself a mode impairing the validity of the contract. And, as before said, the right of defense is just as valuable as the right of action. It is the defendant's remedy. There is really no difference between the one right and the other in this respect."

In the case of *Chicago M. & St. P. Ry. Co.* v. *Minnesota ex rel Railroad and Warehouse Commission,* 134 U. S. 418; 33 L. Ed. 970; 10 S. Ct. 462, the following appears in the opinion of the court:

> "In other words, although the railroad company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the

> hands of the commission, if it chooses to establish rates that are unequal and unreasonable. This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its rights to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

In the case of *Otis Elevator Co.* v. *Industrial Commission, et al,* 302 Ill. 90; 134 N. E. 19, the court said:

> "Due process of law requires submission to a judicial tribunal for determination upon its own independent judgment as to both law and facts according to the settled rules governing judicial action and decisions." Citing *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287; 64 L. Ed. 908; 40 S. Ct. 527.

The attention of the Court is also directed to the case of *Cantor, et al* v. *Sachs, et al* (Del.) 162 Atl. 73, 80:

> "It is to be remembered that questions of due process are raisable not alone with respect to allegedly invalid legislative enactments; they may likewise be directed against the course and manner of conducting judicial proceedings."

The petitioners upon the basis of the foregoing, take the position that where one has a cause of action, he must have a remedy. That therefore the denial of a remedy would amount to a deprivation of the right of action and would amount to a denial of due process of law.

Point C.

The petitioners herein have involved in this cause of action certain rights, which are the petitioners' right to work, to earn wages, to seniority, to work under favorable and preferential conditions, all secured to the petitioners as members of the Brotherhood of Railroad Trainmen by their collective labor agreement with the Louisville and Nashville Railroad Company, and petitioners' right to the protection afforded them by virtue of the contractual obligation of each member of the Brotherhood of Railroad Trainmen to each other member by virtue of the Constitution of said organization. These were such vested property rights as a court of equity should and would protect and were such rights as justified the trial court in invoking its injunctive powers.

In one sense, every right is vested. If a man has a right at all, it must be vested in him. Otherwise, how could it be a right? When a contract is made, a right is vested in each party to have it remain unaltered; to have it performed.

By the judgment and opinion of the Supreme Court of Indiana in this cause, the petitioners have been deprived of a valuable property right, being deprived of their said cause of action.

That petitioners' rights were such as would justify the interference of a court of equity and their protection by injunction against the wrongful invasion thereof by respondents, is fully supported by the law of Indiana. In the case of *Abdon* v. *Wallace*, (1933) 95 Ind. App. 604; 165 N. E. 68, (Petition to transfer to the Supreme Court of Indiana denied) the law is stated as follows:

"Locomotive engineers who are members of the brotherhood are unfriendly toward engineers who are not members thereof, and are particularly so toward persons whom they regard as expelled or suspended members. Organized labor generally is opposed to the employment of engineers who are not members of the brotherhood. It is more difficult for non-member engineers than for members to obtain and remain in employment and to protect their interests, * * * as appears by the foregoing finding, appellees and Stone conspired with each other, on behalf of themselves and the other members of Division 546, and of the brotherhood to drive appellant and appellants in companion cases out of the brotherhood, and to cause them to lose their membership therein, and to deprive them of their rights and benefits in violation of the laws of the brotherhood, and that such acts by which they undertook to accomplish their purpose were void. * * * Such suspension being void, as found by the court, appellant and those associated with him, were not thereafter required to seek relief within the brotherhood, but were entitled at once to resort directly to the courts. * * * It appears by the findings that appellant and those associated with him had valuable rights, that those rights, pursuant to the conspiracy on the part of appellees, were being interfered with, and that appellees, as officers of the local division and as representatives of the brotherhood, were interfering with these valuable rights of appellant and others. *The acts of appellees being unlawful and void, courts of equity will interfere for the protection of such rights as appellant possessed.* In 5 C. J., page 1358, the rule that a court of equity will reinstate a member, where the association, in suspending or expelling him, acted unfairly, or in bad faith, or *beyond its powers*, and not in accordance with its laws or the laws of the land, such relief being granted by way of a decree annulling the wrongful suspension or expulsion, adjudging the member to be entitled to the rights and privileges of membership, and directing his restoration or reinstatement, or enjoining the association from depriving him of such rights or privileges, or interfering therewith."

That seniority is a valuable property right which will justify the interference of a court of equity for the protection of the same is supported by numerous cases. A leading case is that of *Piercy* v. *L. & N. R. Co.*, (1923) 198 Ky. 477; 248 S. W. 1042; 33 A. L. R. 322:

> "The primary purpose in the organization of labor unions and kindred organizations is to protect their individual members, and to secure for them a fair and just remuneration for their labor and favorable conditions under which to perform it. Their agreements with employers look always to the securing of some right or privilege for their individual members, and the right or privilege so secured by agreement is the individual right of the individual members, and such organization can no more, by its arbitrary act, deprive that individual member of his right so secured, than can any other person. The organization is not the agent of the member for the purpose of waiving any personal right he may have, but is only his representative for the limited purpose of securing for him, together with all other members, fair and just wages and good working conditions. * * * If the right of seniority may be changed or waived or otherwise dispensed with by the act of a bare majority of an organization, of which the one entitled thereto is a member, it would be builded upon a flimsy foundation of sand, which might slip from under him at any time by the arbitrary action of the members, possibly to serve their own selfish ends in displacing him.
>
> "But it is insisted by appellants that, inasmuch as Stanfill, when he became a member of the organization, stated that he would abide by its by-laws, rules and regulations, and the constitution, statutes, and orders of the grand division of the order, and cheerfully comply with the will of the lawfully constituted majority he should have submitted to the action of the order, and that he had in fact submitted to the order this controversy between him and his fellow members.

"In the first place Stanfill protested at all times and at all stages of the controversy in the organization against this action, upon the ground that it interfered with his right of seniority, and, in the next place, his agreement did not contemplate the submission by him to that body, of the determination of any question involving his personal rights. Doubtless, under the terms of his agreement as a loyal member, it was his duty to acquiesce in the will of a majority inside the order upon any question of policy or any difference of opinion that might have arisen affecting the welfare of the organization. But here we have a personal right acquired by him as against the railroad company under contract, and we have the order of Railroad Conductors asserting the right to waive for him the benefits of that contract. It could not have been in contemplation by a member of such organization that he agreed when he entered to submit to the order for decision a controversy involving his rights as against a third party."

Another leading case is that of *Schlesinger* v. *Quinto*, (1922), 194 N. Y. S. 401, affirming 192 N. Y. S. 564:

"The instant case does not arise out of a contract for individual employment. Two organizations, one composed of employers and the other of employees, have entered into an agreement. Each had power through the consent of its members to enter into a binding obligation in their behalf. By the constitution or by-laws of each, power is given to the organization to enforce, through disciplinary proceedings which have been demonstrated to be effective, compliance with the terms and conditions to which it has subscribed. This contract has mutual obligations binding on the parties thereto. Each party knows the obligation that it has assumed and the consequences of failure or refusal to perform those requirements. Through its control of its members it can compel performance. Under such circumstances, a decree of a court of equity can be enforced against either party

and in favor of the other. * * * An organization having such power to require performance by individual members can, through its officers, be compelled to exercise that power. There is in this contract mutuality of obligation, and there is also a mutuality of remedy for its enforcement."

In the case of *Donovan, et al* v. *Travers, et al,* (1934) (Mass.) 188 N. E. 705, it is said:

"* * * a right of seniority such as is here asserted is undoubtedly a *valuable property;* it arises only from agreement."

An Ohio case to the same point, is *Leveranz* v. *Cleveland Home Brewing Co.,* 24 Ohio N. P. N. S. 193:

"As long as such a contract continues in force, it ought to be the duty of a court of equity to enjoin any conspiracy on the part of either side to breach it, and the aid of the courts ought to be extended as freely to the employees as to the employers. * * * If a court of equity cannot enjoin an attempted breach of such a contract, then the system of collective bargaining may well be abandoned, and such advantages as come to both the employer and employee by reason of such system will be lost, as the legal remedy is wholly inadequate. The expense of obtaining it would render it valueless."

In an annotation in 95 A. L. R., page 48 (1935) the annotator makes the following comment:

"In *Stone Cleaning & Pointing Union* v. *Russell,* (1902) 38 Misc. 513, 77 N. Y. S. 1049, where the services involved were neither unique nor extraordinary, being of a uniform and established character, it was held that an injunction would not issue to restrain an employer's breach of contract with a union to employ none but its members for certain work. But this is not the general rule, for it now seems established that the remedy by injunction allowed to an employer is reciprocal."

Another Kentucky case in point is the case of *Gregg* v. *Starks*, 224 S. W. 459:

> "The very fact that the contract itself provides rights of seniority where the pay is the same is evidence that such rights were considered by the contracting parties as of sufficient value to demand protection. * * * Even conceding that the freight service is as remunerative as the passenger, it certainly must be apparent to any one that to be relegated to freight service after 20 years of passenger service would inflict irreparable injury if done in violation of a contract right, and that such injury could not be estimated in damages. Recognizing fully the general rules under which injunction is denied to enforce a contract for personal services or where the applicant has an adequate remedy at law, or where he will not suffer irreparable injury, we are nevertheless clearly of the opinion that none of these authorities are applicable here, and that the facts of this case are so extraordinary as to require injunctive relief if plaintiff is to have any protection whatever in his contract rights"

The following appeared in the case of *Harper* v. *Local Union, I. Union I. B. of E. W.*, (Tex) 48 S. W. 2nd, 1033:

> "We think it clear that appellees have no adequate remedy at law. As we have seen, there were no specific contracts of employment; and no criterion of practical application for ascertaining the damages that would flow from breach of the collective agreement is suggested. If injunction will not lie, the agreement, in so far as it is to the advantage of appellees, is unenforceable, and might as well be classed as merely a moral obligation or 'gentleman's agreement' ".

Judge Rosenman, in *Farulla* v. *Ralph A. Freundlich, Inc.*, 274 N. Y. S. 70, said:

> "The courts of this state have consistently enjoined threatened breaches of collective industrial agreements."

In the case of *Weber* v. *Nasser*, Cal. App., 286 P. 1074; superseded in 292 P. 637 on ground that sole question involved had become moot, the court said:

> "Courts should, in the interest of public welfare, give recognition to the laudable efforts of groups to improve industrial conditions and prevent waste and violence, and where the parties have contracted with that end in view, their contracts should be enforced in a manner to give them effect if possible."

Other cases supporting this position are *Suttin* v. *Union Button Works, Inc.*, 258 N. Y. S. 863; *Ribner* v. *Racso Butter & Egg Co.*, 238 N. Y. S. 132; *Goldman* v. *Cohen*, 227 N. Y. S. 311; *Order of Ry. Conductors* v. *Jones*, (Colo.) 239 P. 882.

Point D.

Under the facts of this case as disclosed by the Statement of the Case herein, petitioners said vested property rights were threatened with wrongful invasion upon the part of the respondents. The petitioners being members along with certain of the respondents, of the Brotherhood of Railroad Trainmen, were entitled to all the benefits secured them by the constitution of that organization, and were bound by its terms. This same statement applies to the respondents. When the Chicago and Eastern Illinois depot was closed in Evansville, Indiana, in 1935, the petitioners and respondents sought to settle differences arising betwen them as to the right of Chicago and Eastern Illinois yardmen to follow certain work into the Louisville and Nashville yards. The petitioners and respondents sought to settle this controversy by the submission of the same to the duly constituted tribunals of the Brotherhood of Railroad Trainmen set up to arbitrate such controversies by the constitution of the Brotherhood. Finally, the controversy was submitted to the Board of Appeals of the Broth-

erhood of Railroad Trainmen for decision. In a hearing participated in by both petitioners and respondents, and in which proceeding the respondents, as well as the petitioners invoked the jurisdiction of said tribunal, the position of the petitioners was sustained by a written decision. The same appears in the printed record at pages 70 to 71. By the constitution of the Brotherhood of Railroad Trainmen it is provided: "Such decision (of the Board of Appeals) shall be the final adjudication of any and all rights and questions included in the appeal." (Rec. P. 31, section 15(b) of the constitution of the Brotherhood of Railroad Trainmen). It has been the contention of the petitioners throughout this cause of action that this decision of the Board of Appeals constitutes a final adjudication of the controversy between the petitioners and the respondents. The petitioners have a substantive right or a vested property right in the benefits of said decision and judgment of the Board of Appeals, which they have a right to enforce by resort to the courts of Indiana. The record discloses that at a later date after this decision had been acquiesced in for more than a year, an attempt was made in a quadriennal convention of the Brotherhood of Railroad Trainmen at Cleveland, Ohio, to reverse this decision of the Board of Appeals (Rec. P. 72). The record is silent as to any provision of the constitution of the Brotherhood of Railroad Trainmen, giving any convention the right to reverse the Board of Appeals of that organization, which constitution makes the Board of Appeals' decisions final, nor is there any evidence in the record indicating that the constitution had been amended. Manifestly, the action of the Cleveland convention in 1939, attempting to override the decision of the Board of Appeals, was void as an *ultra vires* act of that body. The Supreme Court of Indiana does not hold that it was a valid act upon the part of that convention, nor does the Supreme Court of Indiana hold

that the decisions of the Board of Appeals of the Brotherhood of Railroad Trainmen are not final in character. The petitioners had the right to seek the aid of a court of equity in Indiana to protect them against the threatened invasion of their rights in violation of their favorable decision at the hands of the Board of Appeals of the Brotherhood of Railroad Trainmen.

In this connection, the petitioners desire to call the Court's attention to the case of *Robinson* v. *Dahm*, 159 N. Y. S. 1053, in which the court said:

> "Granted that a right of plaintiff has been violated, is he entitled to equitable relief? If such relief is denied, plaintiff, in case he is discharged under such circumstances that his rightful priority position would have protected him, may sue for damages for the breach of contract in discharging him. But the possible future wrong is not the true basis of this action; plaintiff is not suing to restrain the commission of a threatened wrong. On the contrary, his action is based on a wrong already committed—the violation of his contract right to a certain priority position. Equitable relief should not be denied for one wrong on the ground that plaintiff has an adequate remedy at law for another and distinct wrong. For the precise wrong in question—the deprivation of his rightful priority position—plaintiff has no adequate remedy at law. The damages for the lessened security of plaintiff's future position, as well as for the possible consequences of the breach of contract committed, are not ascertainable. It is a ground for equitable relief in the nature of a decree of specific performance that there is no basis on which damages can be estimated. *St. Regis Paper Co.* v. *Santa Clara Lumber Co.*, 173 N. Y. 149, 65 N. E. 967. I think plaintiff is entitled to the relief demanded."

Granted that in certain matters pertaining to the management of a labor organization, courts will not interfere,

however, as here, where the jurisdiction of the Board of Appeals to finally determine a controversy submitted it has been established, fixed and acquiesced in, courts of Indiana should interfere to protect petitioners against the threatened invasion of their rights.

The rule is fully stated in 7 C. J. S., pages 79 to 82, section 34:

> "The courts will not interfere with the internal affairs of an unincorporated association so as to settle disputes between the members, or questions of policy, discipline, or internal government, so long as the government of the society is fairly and honestly administered in conformity with its laws and the law of the land, and no property or civil rights are invaded, and, under such circumstances, the decision of the governing body or established private tribunal of the association is binding and conclusive and not subject to review or collateral attack in the courts. * * * Nevertheless, the courts have and will exercise power to interfere in the internal affairs of an association where law and justice so require, and the proceedings of the association are subject to judicial review where there is fraud, oppression, or bad faith, or property or civil rights are invaded, *or the proceedings in question are violative of the laws of the society*, or the law of the land, or *ultra vires, or are otherwise illegal.*
>
> "In this connection it has been pointed out that the rule that the courts will not interfere with the internal affairs of a voluntary association *does not relieve such association from application of the general law of contracts, and, while the courts will not overrule the decision of an association's tribunal merely because of a difference of opinion as to the merits, they will review the action taken sufficiently to ascertain whether such tribunal followed the procedural terms of the agreement and correctly construed and applied the substantive terms thereof.* * * * Even in cases otherwise warranting judicial interference the

courts will not, as a rule, take jurisdiction unless the complaining member has exhausted such remedies as may be provided by the laws of the association itself. However, the rule requiring a member to exhaust his remedies within the organization before applying to a court of equity for relief is subject to the qualification that the act or acts complained of must have been *in accord with the association's regulations, and where the proceeding is irregular and the association acted without jurisdiction,* the member aggrieved thereby may seek judicial redress by a direct appeal to the courts in the first instance."

Another leading case is the case of *Polin* v. *Kaplan,* (N. Y. Court of Appeals) 177 N. E. 833:

"The constitution and by-laws of an unincorporated association express the terms of a contract which define the privileges secured and duties assumed by those who have become members. As the contract may prescribe and precise terms upon which a membership may be gained, so may it conclusively define the conditions which will entail its loss. Thus, if the contract reasonably provides that the performance of certain acts will constitute a sufficient cause for the expulsion of a member, and that charges of their performance, with notice to the member, shall be tried before a tribunal set up by the association, the provision is exclusive, and the judgment of the tribunal, rendered after a fair trial, that the member has committed the offenses charged and must be expelled, will not be reviewed by the regularly constituted courts. * * * This is not to say, however, that a court will decline to interfere, if an expulsion has been decreed for acts not constituting violations of the constitution and by-laws, and not made expellable offenses thereby, either by terms expressed or implied. In such an instance, the expulsion is not within the power conferred by the contract. Accordingly, the proceedings will be set aside and the associate restored to membership."

Another New York case is that of *Yockel* v. *German-American Bund*, 20 N. Y. S. 2nd, 774:

> "In any event, nothing contained in the Bund constitution warrants the summary action taken upon the stated ground and in the circumstances here disclosed. While the court will not review the merits of an expulsion after a fair and proper trial, it will not 'decline to interfere, if an expulsion has been decreed for acts not constituting violations of the constitution and by-laws, and not made expellable offenses thereby, either by terms expressed or implied. In such an instance, the expulsion is not within the power conferred by the contract.' * * * Where irregularities in procedure and non-compliance with by-laws and constitution are alleged, immediate recourse may be had to the courts. * * * The member is not called upon 'to abide by any rule or regulation which is unfair, unreasonable, and arbitrary, and which would tend to deprive him of rights guaranteed him by the constitution.' "

In Volume 4, American Jurisprudence, at page 466, sections 17 and 18, is found the following:

> "* * * A court of equity may enjoin any act of an association toward one of its members which is unauthorized and unlawful, if he has not otherwise any remedy adequate for the protection of his rights."

This same work in Volume 31 thereof, at page 864, section 66, contains the following further statement:

> "* * * However, an injured member may seek redress in court when the rights and privileges guaranteed to him by the constitution and by-laws have been disregarded."

In Volume 63 of Corpus Juris, at page 701, section 82, the following appears in the text:

> "Tribunals may be set up by a union for the determination of controversies between members or locals.

> * * * The existence of a tribunal properly erected and charged with the duty of determining the rights of members of the unions as between themselves and their organization precludes the interference by the courts as to matters so confided. * * * This rule however, does not relieve the union from the application of the general law of contracts, and the court may interfere to safeguard any of the rights and privileges guaranteed to a member by the constitution and laws of his union."

Sustaining this same proposition is the case of *Abdon* v. *Wallace*, 95 Ind. App. 604; 165 N. E. 68 (Petition to transfer to the Indiana Supreme Court denied).

Petitioners not only have the right to invoke the injunctive powers of the court to protect their seniority rights and contractual rights under the constitution of the Brotherhood of Railroad Trainmen, but they are also entitled to seek injunctive relief to prevent the unauthorized and unfair and *ultra vires* action upon the part of the Cleveland convention.

In the case of *Robinson* v. *Dahm*, 159 N. Y. S. 1053, cited above, the court made this further observation:

> "While, therefore, the courts will not overrule the decision of association tribunals merely because of a difference of opinion as to the merits, they will review the action taken sufficiently to ascertain whether the tribunals (a) followed the procedural terms of the agreement and (b) correctly construed and applied the substantive terms of the agreement."

Point E.

It must be borne in mind that the Supreme Court of Indiana did not pass upon the merits of the controversy between the petitioners and respondents. Said court nei-

ther sustained the position of the petitioners or that of the respondents. In effect, said court declined to decide this cause of action, assigning as its reason that a court will not interfere with the internal affairs of a union.

The opinion and judgment of the Supreme Court of Indiana denies to the petitioners due process of law. By this opinion the law of this case is established. No other relief is available to the petitioners. More important however, is the far-reaching effect of the erroneous rule laid down by the Supreme Court of Indiana. If this rule is permitted to prevail, the individual member of a labor union is just the pawn of the organization. He is subject to any restriction, any regulation that some officer of the central organization might seek to impose upon him, however unjust. The union itself is beyond the reach of the courts. No governmental agency enjoys such immunity. Membership of the individual means the surrender of every right of a free man. The result of this decision is to make dictators out of many power grasping union officials. Democratic processes within unions are abolished. The individual, the man who pays part of his wages as dues to support the union, surely he is entitled to some protection. He is entitled to the protection of the courts. Fortunately, such a rule cannot be justified. Courts do, and should have the right to interfere in the internal affairs of a union to protect an individual or group of members from arbitrary or illegal interference with the individual's rights.

Here, in an orderly process, these parties had followed a fixed course of procedure by which they arbitrated their controversy. They had carried this process of arbitration to the Board of Appeals of the Brotherhood of Railroad Trainmen. This commendable practice should receive the

approval and sanction of the courts. The petitioners should be entitled to receive the full benefits of the decision of that tribunal arbitrating this original controversy.

The petitioners respectfully urge that the Supreme Court of the United States upon examination of their petition and brief herein will grant the prayer of their petition for writ of certiorari, and that a writ of certiorari may issue out of and under the seal of this Court, directed to the Supreme Court of the State of Indiana, to the end that the judgment of the Supreme Court of Indiana may be reviewed and reversed by this honorable Court.

Respectfully submitted,

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by said Railroad Company in the Same Capacity as the Named Parties,
Petitioners,

By THEODORE LOCKYEAR,
ELMER Q. LOCKYEAR,
CHARLES J. EICHEL,
Attorneys for Petitioners.

Dated at Evansville, Indiana,
June 15th, 1942.

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 148.

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties, Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and
JAMES DUVALL,
For Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in Its Yard in Evansville, Indiana,
A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen, Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 148.

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,
For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties, Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and
JAMES DUVALL,
For Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in Its Yard in Evansville, Indiana,
A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen, Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States of America:

The respondents, Russell M. Hayhurst, George Koenig and James Duvall, for themselves and on behalf of all those members of the Brotherhood of Railroad Trainmen who are employed by the Chicago and Eastern Illinois

Railway Company as switchmen and yardmen in its yard at Evansville, Indiana; A. F. Whitney, President; J. A. Zanger, Vice-President, and G. W. Anderson, General Secretary and Treasurer, for themselves and on behalf of all members of the Brotherhood of Railroad Trainmen, and the Louisville and Nashville Railroad Company, a corporation, respectfully submit their brief in opposition to the Petition of Carlos J. Miller et al., petitioners, for a writ of certiorari.

I.

OPINION OF THE STATE COURT.

The opinion of the Supreme Court of Indiana will be officially reported in the Indiana Reports and has been reported in 38 N. E. (2d) 239; a true copy of same is set out in the Printed Record, pp. 98-103.

II.

THERE ARE NO GROUNDS UPON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES CAN BE INVOKED IN THIS CAUSE.

The jurisdiction of the Supreme Court of the United States cannot be invoked in this cause under Section 237 of the Judicial Code of the United States as amended, Federal Code Annotated, Title 28, Section 344 (b), or Section 1 of the Fourteenth Amendment of the Constitution of the United States, for the following reasons, to wit:

(a) There is no Federal Question involved.

(b) The petitioners have had a full and complete hearing and judicial determination of their claims in a court of competent jurisdiction which passed upon same, and have had a review of the trial court's decision by the highest tribunal of the State of Indiana.

(c) The State Court's decision rests upon an adequate nonfederal ground.

(d) No vested property rights, privileges or immunities are involved in this controversy, and therefore the decision of the Supreme Court of Indiana cannot be construed as taking property without due process of law.

(e) Every question presented by the petition herein was presented to the trial court and reviewed by the Supreme Court of Indiana. Petitioners did not claim that the questions presented or rights involved were Federal in nature until they filed a petition for rehearing in the Supreme Court of Indiana, and they could not present said claimed Federal question for the first time in a petition for a rehearing unless the decision of the Supreme Court of Indiana supplied a new and unexpected basis for a claim by the defeated party of the denial of a Federal right. The Supreme Court of Indiana and the Supreme Court of the United States had previously passed upon this same question and therefore the decision of the Supreme Court of Indiana in the case at bar could not supply any **new and unexpected basis** for any claim of petitioners.

III.

ADDITIONAL STATEMENT OF THE CASE.

The facts outlined by petitioners under this heading are substantially correct. However, petitioners were not content to rely solely on the facts, and have added numerous comments and innuendoes which respondents dispute and maintain are incorrect.

On page 7, lines 3 to 12, of petitioners' brief we find the following language:

> "The petitioners herein were the plaintiffs in the trial court, and by their complaint alleged, and upon trial supported said allegations by proof that they

were employed by the Louisville and Nashville Railroad Company as switchmen and yardmen under a written collective labor agreement, through which they held certain seniority rights, together with the exclusive right to perform all switching and yard services in the yards of said railroad in Evansville, Indiana."

There is no provision in said agreement which gives petitioners any exclusive right to perform the switching and yard services in the Evansville yard of the Louisville and Nashville Railroad. In fact, petitioners proved upon trial, by several witnesses, that the Evansville, Indiana, yard of the Louisville and Nashville Railroad was not operated as a closed shop. (See testimony of N. E. Lane [Rec. p. 38, lines 15 to 18] and C. J. Becker [Rec. p. 48, lines 24 to 38]). This evidence is uncontradicted.

On page 8 of their brief, petitioners allege that on May 5, 1938, the Board of Appeals of the Brotherhood of Railroad Trainmen rendered a decision upholding the position taken by the Louisville and Nashville yardmen. This statement is true, but petitioners then allege that respondents acquiesced in this ruling until May and June, 1939. Respondents did not acquiesce in said decision but, under the Constitution of the Brotherhood of Railroad Trainmen, were bound to follow said decision until it was reversed by a higher tribunal of the Brotherhood. The only higher tribunal of the Brotherhood of Railroad Trainmen was, and is, the Grand Lodge Convention, which convened in May and June, 1939, for the first time since the Board of Appeals rendered its decision of May 5, 1938. Said decision was duly presented to and considered by said convention, which is the Supreme Governing Body of the Brotherhood of Railroad Trainmen, and the decision of said Board of Appeals was reversed with instructions to put into effect the prior ruling of the President upholding the position taken by the respondents.

In discussing the resolution passed by the Grand Lodge of the Brotherhood of Railroad Trainmen in convention assembled during the months of May and June, 1939, petitioners allege, on page 9 of their brief, that it was ultra vires and void. The Constitution of the Brotherhood of Railroad Trainmen provides that the Grand Lodge is the supreme governing body of the association and gives to the Grand Lodge the right to hear and determine all controversies brought before it by appeal or otherwise (Rec. p. 29, lines 5 to 10). This controversy was duly presented to the Grand Lodge, which body, after a full hearing, rendered a decision. The adoption of the resolution containing this decision by the Grand Lodge of the Brotherhood of Railroad Trainmen was neither ultra vires nor void, and is binding on both petitioners and respondents.

THE BROTHERHOOD OF RAILROAD TRAINMEN.

All of the men actively interested in this case are members of the Brotherhood of Railroad Trainmen, which is a voluntary unincorporated association organized September 23, 1883 (Rec. p. 35). The Louisville and Nashville Railroad Company was made a party by petitioners in order to make the injunction which they sought effective, but said railroad has taken no active part in this controversy from its inception up to the present time. The Brotherhood of Railroad Trainmen is made up of a number of Lodges. Each local Lodge handles the grievances of its men through a local Grievance Committee. The grievances of the men on any particular railroad are handled through a General Grievance Committee, which is composed of the Chairmen of all the local Grievance Committees of the Lodges on that railroad. All of the men actively interested in this controversy are members of Incline Lodge No. 242, located in the City of Evansville, Indiana. If

controversies arise between men on different railroads, the dispute is taken up by the General Grievance Committees for those railroads. If they are unable to agree a system of appeals is provided by the Constitution of the Brotherhood of Railroad Trainmen. All questions concerning the interpretation of the Constitution or laws of the Brotherhood of Railroad Trainmen are appealed to the President under Section 86 of the Constitution, which reads as follows:

> "The provisions of this Constitution and General Rules shall be interpreted and construed according to their most plain and obvious meaning, and should any doubt arise as to the proper construction of any section or rule thereof it shall be referred to the President of the Brotherhood, whose decision shall be final, unless reversed by the Board of Directors or by the Grand Lodge. Any officer or member of the Brotherhood desiring to appeal from an interpretation made by the President of the Brotherhood on the Constitution and General Rules may do so to the Board of Directors within ninety days from the date such decision was rendered or the Board of Directors may, upon their own motion, reverse the interpretation of the President of the Brotherhood. Should no appeal be taken to the Board of Directors within ninety days or should the Board of Directors not intervene at its next meeting, the decision of the President of the Brotherhood shall be final. Should an appeal be taken to the Board of Directors or should the Board of Directors intervene, and in either event render a (fol. 148k) decision, if not appealed from within ninety days to the Grand Lodge, the decision of the Board of Directors shall be final" (Rec. pp. 32-33).

All questions of fact arising under General Rule No. 10 were appealed to the Board of Appeals under Section 15-b of the Constitution:

"It shall be the duty of the Board of Appeals to meet SEMI-annually on the second Monday in April and October, at Brotherhood headquarters, to consider and determine all appeals arising under General Rule No. 10 of the General Rules and Section 149 of Constitution of the Brotherhood which have been appealed to the Board of Appeals. Immediately after their election the members of the Board shall meet and elect a Chairman and a (fol. 148g) Secretary. The Secretary shall keep a true and correct record of the proceedings of the Board. During such years in which no conventions are held, the Board shall report its proceedings to the subordinate lodges immediately after the close of each meeting. The Board shall submit a complete report of all of its transactions for the period between conventions to each session of the Grand Lodge. The decision of the Board upon each appeal coming before it shall be in writing, and shall state in clear and concise terms the decision of the Board giving reason and reference to justify and sustain such decision for the information of those interested in the appeal and other members of the Brotherhood. Such decision shall be the final adjudication of any and all rights and questions included in the appeal" (Rec. p. 31).

The supreme governing body of the Brotherhood of Railroad Trainmen was and is known as the Grand Lodge. It is composed of the Grand Lodge officers and delegates from each of the local lodges and meets in quadrennial conventions. The Grand Lodge, which created the Grand President and the Board of Appeals as subordinate tribunals within the Brotherhood, reserves to itself the right to hear and determine all controversies whether brought before it by appeal or otherwise under Section 6 of the Constitution, which reads as follows:

"The Grand Lodge has exclusive jurisdiction over all subjects pertaining to the Brotherhood, and its en-

actments and decisions upon all questions are the supreme law of the Brotherhood. The Grand Lodge may hear and determine all matters of controversy which may be brought before it by appeal or otherwise; issue all charters, reprove and punish the misconduct of subordinate lodges; adopt laws and regulations of general application for the government of the Brotherhood, and alter, amend, or repeal (fol. 148c) the same; control and regulate the unwritten work of the Brotherhood; establish, print, and supply all charters, constitutions, official receipts, rituals, dispensations, withdrawal, transfer and traveling cards of the Brotherhood; make such assessments for revenue as may be necessary to defray the expenses of the Grand Lodge, and do all things necessary to promote the welfare of the Brotherhood'' (Rec. p. 29).

PROCEDURE WITHIN THE BROTHERHOOD UPHOLDING RESPONDENTS' RIGHT TO WORK IN THE L. & N. YARDS IN EVANSVILLE.

The C. & E. I. station in Evansville was closed on July 13, 1935, with the approval of the proper authorities. The respondents demanded the right to follow into the L. & N. yards the work which they lost as a result of the closing of said station under the laws of the Brotherhood of Railroad Trainmen.

Prior to the time when this controversy arose a number of railroads consolidated and effected various types of mergers because of financial difficulties. So many members of the Brotherhood of Railroad Trainmen were affected that the Grand Lodge of the Brotherhood of Railroad Trainmen, many years before this controversy arose, passed a Declaration of Policy of the Brotherhood of Railroad Trainmen in relation to seniority rights of train and yard men on lines of railway or portions thereof where mergers are made effective. The C. & E. I. men claim the

right to follow the work which they lost into the L. & N. yards under Sections A and G of that Declaration, which reads as follows:

> "When through lease, purchase, or otherwise, a line or more than one line of railway, or any portion thereof, is taken over for operation purposes by another line, all train and yard men on the line, lines, or (an equitable number to man the) portion thereof taken over, shall be conceded the right to go with the line, or portion thereof, by which they had been previously employed, and shall be regarded as having prior rights in their respective classes to work or runs originating and terminating on the territory with which they are transferred.
>
> "Where new lines of railroad are built and no seniority exists, men from the old parent lines, from which traffic is diverted, will be transferred to the new lines in equal percentage to the mileage of the traffic diverted from the old line of road.
>
> * * * * * * *
>
> "In the merging of yard work operation by two or more railways, yardmen should be assigned to the merged work on the basis of yard engine hours worked by the respective lines in the respective yards for a consistent period or periods prior to merger, and should, for future assignment or promotion in the merged service, be placed on a merged roster with the seniority dates they held on their original yard roster" (Rec. pp. 34 and 35).

The L. & N. men denied the claim of the C. & E. I. men on the grounds that it would interfere with their seniority rights. The General Grievance Committees for the L. & N. and C. & E. I. Railroads were unable to agree and an appeal was taken to the President, who interpreted the laws of the Brotherhood and held that the C. & E. I. and L. & N. Railroads had effected a merger within the meaning of Sections A and G of the Declaration of Policy of the

Brotherhood of Railroad Trainmen, and upheld the right of the C. & E. I. men to follow their work into the L. & N. yards. A further appeal was taken to the Board of Appeals, who held that the C. & E. I. men would lose time as a result of the closing of the C. & E. I. station, but refused to follow the laws of the Brotherhood of Railroad Trainmen as interpreted by the President and determined that no merger was involved. The controversy was brought before the next Grand Lodge convention of the Brotherhood of Railroad Trainmen, who overruled the action of the Board of Appeals and sustained the right of the C. & E. I. men to follow the work into the L. & N. yard. The instant action was brought to enjoin the employment of the C. & E. I. men pursuant to the action of the Grand Lodge convention of the Brotherhood of Railroad Trainmen.

IV.

SUMMARY OF ARGUMENT.

1. The Supreme Court of the United States will not take jurisdiction to pass upon any question presented by the petition for a writ of certiorari herein, for each of the following reasons:

(a) **The Supreme Court of the United States has previously denied certiorari in an action which presented the same questions of law.**

(b) **The question involved in the decision of the Supreme Court of Indiana was not new and unexpected and the presentation of a claimed Federal question for the first time in petitioners' petition for a rehearing before the Supreme Court of Indiana came too late.**

(c) **No property or civil rights are involved in this case and therefore no Federal question is presented by the petition.**

(d) A voluntary unincorporated association, such as the Brotherhood of Railroad Trainmen, may adopt a constitution and by-laws for the government of its members which are controlling in all internal matters of the association and the courts will not interfere with the internal affairs of such an association so as to settle disputes between members, or questions of policy, discipline, or internal government, so long as the government of the association is fairly and honestly administered in conformity with its laws and the laws of the land and no property or civil rights are involved.

(e) There was a judicial determination of the questions involved by a court of competent jurisdiction.

ARGUMENT.

POINT I.

The Supreme Court of the United States will not take jurisdiction to pass upon any question presented by the petition for a writ of certiorari herein for the following reasons:

(a) **The Supreme Court of the United States has previously denied certiorari in an action which presented the same questions of law.**

For many years prior to July 14, 1935, there were two railroad stations located in the City of Evansville, Indiana. One was owned and operated by the Chicago and Eastern Illinois Railway Company and the other was owned and operated by the Louisville and Nashville Railroad. A union track joined the two stations. During all of the time involved in this controversy the C. &. E. I. Ry. Co. had ten trains arriving and ten trains leaving the City of Evansville each twenty-four hours. Six of these trains were referred to as "through trains" which came from Chicago, stopped at the C. &. E. I. station, crossed on the union track to the L. & N. station, and then continued south to Miami, Florida, or vice versa. The other four trains traveled from Chicago to the C. & E. I. station in Evansville and turned around and made the return trip. These were commonly referred to as "local trains." The C. & E. I. yardmen and switchmen did all of the switching and yarding on the four local trains and also all of the yarding and switching on the six through trains which originated in the C. & E. I. yards at Evansville, Indiana.

On July 14, 1935, the Chicago and Eastern Illinois Railway Co., with the permission of the proper authorities, discontinued the use of its station and yard in Evansville, Indiana. Since that time all C. & E. I. trains have used the

L. & N. station, pursuant to a written agreement between the C. & E. I. and L. & N. railroads providing for the joint use of the L. & N. station and yard facilities in Evansville, Indiana.

All of the men actively engaged in this case are members of the Brotherhood of Railroad Trainmen, a voluntary, unincorporated association, and were working under contracts which had been negotiated for them with the respective railroads by the Brotherhood of Railroad Trainmen. Commencing in 1929, many railroads had financial difficulties and there were numerous mergers and consolidations both of railroads and of yarding and station facilities. These mergers and consolidations affected so many members of the Brotherhood of Railroad Trainmen that the Grand Lodge Convention of that association enacted and adopted a Declaration of Policy with reference to seniority in mergers and consolidations. This Declaration of Policy was in force and effect and binding on all members of the Brotherhood of Railroad Trainmen when the C. & E. I. station in Evansville was closed and the L. & N. and C. & E. I. railroads entered upon their merged operation of station and yarding facilities.

This entire controversy arises out of the claimed right of the C. & E. I. switchmen and yardmen to follow the work which they lost as a result of the closing of the C. & E. I. station and yard in Evansville into the L. & N. yards. The C. & E. I. men based their right to work in the L. & N. yards on Articles A and G of the above-mentioned Declaration of Policy of the Brotherhood of Railroad Trainmen (Rec. p. 34, lines 20 to 38, and p. 35, lines 1 to 8).

The claim of the C. & E. I. men was denied by the L. & N. men on the grounds that the placing of any C. & E. I. men in L. & N. yards would interfere with the seniority rights held by the L. & N. men.

This controversy was presented to the duly constituted tribunals of the Brotherhood of Railroad Trainmen with

the result that in due course the Grand Lodge Convention sustained the claimed right of the C. & E. I. men. The case at bar was brought to enjoin the enforcement of the action of the Grand Lodge.

In April, 1939, the Appellate Court of Illinois passed upon this same question in the case of Evans et al. v. Johnson et al., 20 N. E. (2d) 841. Following a consolidation of two districts by the railroad, the Brotherhood of Locomotive Engineers attempted to put into effect a merged seniority roster. The complainants who claimed interference with their seniority rights were not members of the Brotherhood but were third party beneficiaries of the Brotherhood's contract with the railroad. The controversy was carried through the various tribunals and the merged roster was finally upheld by the Convention of the Brotherhood. The Appellate Court of Illinois held the complainants stood no higher than the members of the Brotherhood and sustained the action of the Convention. Judge Denis E. Sullivan, in his opinion, used the following language:

> "The plaintiffs sought to have declared null and void a certain merger agreement entered into between representatives of the General Committee of Adjustment of the Brotherhood of Locomotive Engineers, and The Pennsylvania Railroad Company, effective December 1, 1930, by which the engineers' seniority rosters on the Ft. Wayne and Pan Handle Seniority Districts on the Chicago Terminal Division of the Pennsylvania Railroad were dovetailed as of the date of hire and a permanent injunction restraining the defendants from following or recognizing said merger agreement in the employment of engineers on said Chicago Terminal Division of the Pennsylvania Railroad. * * *
>
> "It seems to us that where a labor union, composed of employees of a company, whether the objector is a principal or an employee of a certain company,

where the rights of the employees are in the hands of the union for the purpose of settling disputes or adjustments of their rights, or have under consideration collective bargaining of any kind, that when an agreement is made, no fraud having been shown, it is to be presumed that they have had a fair hearing before their union committees and presented their side. Under these circumstances the employees would be bound by the actions of the officers of their union. * * *

"See also George T. Ross Lodge et al. v. Brotherhood of Railroad Trainmen, 191 Minn. 373, 254 N. W. 590; Long et al. v. Baltimore & Ohio Railroad, 155 Md. 265, 141 A. 504; Simpson v. Grand International Brotherhood of Locomotive Engineers, 83 W. Va. 355, 98 S. E. 580. * * *

"We are of the opinion that the parties, as plaintiffs, were bound by the action of their committees. They had a full, fair hearing. No fraud intervened and we believe they are bound by the actions of the committee of their union whose action was reviewed by the highest tribunal of their organization which was created by them to review and adjust these differences.

"For the reasons herein given the decree is reversed and the cause is remanded with directions to dismiss the bill of complaint for want of equity."

The Appellate Court of Illinois denied a rehearing of this case on May 8, 1939. A petition for leave to appeal was denied by the Supreme Court of Illinois on October 12, 1939 (301 Ill. App. XXII). A petition for a writ of certiorari to the Appellate Court of Illinois was denied by the Supreme Court of the United States on February 12, 1940 (309 U. S. 662, 60 S. Ct. 582, 84 L. Ed. 1010).

(b) **The question involved in the decision of the Supreme Court of Indiana was not new and unexpected and the presentation of a claimed Federal question for the first time in petitioners' petition for a rehearing before the Supreme Court of Indiana came too late.**

The petitioners, by their original complaint, sought to enjoin the employment of respondents in the L. & N. yards in Evansville, Indiana, on the ground that such employment would interfere with seniority rights held by petitioners. The prayer of their complaint reads as follows:

> "Wherefore, the plaintiffs pray the court that upon approving plaintiffs' bond tendered herewith for the approval of the court, that it enter a temporary restraining order against said defendants, without notice, restraining the defendants and each of them from employing a switchman or yardman of the Chicago and Eastern Illinois Railway Company in the yards of the defendant, Louisville and Nashville Railroad Company in the City of Evansville, Vanderburgh County, Indiana, and from in any manner interfering with the plaintiffs' right to seniority and employment as the employees of the Louisville and Nashville Railroad Company, and that the defendant, Louisville and Nashville Railroad Company, be temporarily restrained from employing any person as a switchman or yardman in the yards of said defendant, Louisville and Nashville Railroad Company, except one holding seniority as a switchman or yardman with said Louisville and Nashville Railroad Company, and that the court upon proper notice enter a temporary injunction against said defendants, enjoining said defendants as aforesaid during the pendency of this action, and that upon a final hearing said temporary injunction be made permanent, and that the court enter a judgment for costs against the defendants and each of them and for all other just and proper relief."

The respondents filed an answer in three paragraphs to said complaint. In their second paragraph of answer, re-

spondents alleged, and upon trial proved, that this controversy was presented to the various tribunals of the Brotherhood of Railroad Trainmen and was finally entertained, heard and determined by the Grand Lodge Convention of said Brotherhood, the highest tribunal and supreme governing body of said association, and further claimed the right to employment in the L. & N. yards at Evansville in accordance with said decision of the Grand Lodge (Rec. pp. 14-19).

It is, therefore, readily seen that the same question was presented to the trial court and to the Supreme Court of Indiana as is presented by the petition for a writ of certiorari herein. But the record discloses that petitioners did not claim that this question was Federal in nature, or that Section I of the Fourteenth Amendment to the Constitution of the United States had been violated, prior to the filing of a petition for a rehearing before the Supreme Court of Indiana. This was not a timely presentation of petitioners' claim that a Federal right had been violated.

Petitioners admit that this is true, but claim the presentation for the first time of a claimed violation of a Federal right in the petition for a rehearing before the Supreme Court of Indiana was timely in the case at bar because "the decision of the Supreme Court of Indiana supplied a new and unexpected basis for a claim by the petitioners of the denial of a Federal right."

But the authorities do not sustain petitioners because the Supreme Court of Indiana and the Supreme Court of the United States had previously passed on the same question, and the decision in the case at bar was neither new nor unexpected. In Herdon v. Georgia, 295 U. S. 441, 79 L. Ed. 1530, 55 Sup. Ct. 794, rehearing denied in 296 U. S. 661, 80 L. Ed. 471, 56 Sup. Ct. 82, this court decided that there is nothing new or unexpected about a decision of a state

court if the decision was based upon a prior decision of the same court. In his opinion Justice Sutherland said, on pages 445 and 446 of the reports:

> "On this appeal the statute is assailed as contravening the due process clauses of the Fourteenth Amendment in certain designated particulars. We find it unnecessary to review the points made since this court is without jurisdiction for the reason that no Federal question was seasonably raised in the court below or passed upon by that court. * * *
>
> "The Federal question was never properly presented to the State Supreme Court unless upon motion for rehearing; and that court then refused to consider the long established rule that the attempt to raise a Federal question after judgment upon a petition for rehearing comes too late unless the court actually entertains the question and decides it. (Citing cases.) * * *
>
> "Petitioner, however, contends that the present case falls within an exception to the rule—now that the question respecting the validity of the statute as applied by the lower court first arose from its unanticipated act in giving to the statute a new construction which threatened rights under the Constitution. There is no doubt that the Federal claim was timely if the ruling of the State Court could not have been anticipated and a petition for rehearing presented the opportunity for raising it. * * *
>
> "On March 18, 1933, several months prior to the action of the trial court on the motion for a new trial, the State Supreme Court had decided Carr v. State, 176 Ga. 747. In that case Section 56 of the Penal Code under which it arose was challenged as contravening the Fourteenth Amendment. The court in substance construed the statute as it did in the present case. * * *
>
> "Appellant, of course, cannot plead ignorance of the rule in the Carr case and was therefore bound to anticipate the probability of a similar ruling in his own case and preserve his right to a review hearing by an appropriate action upon the original hearing in the

court below. It follows that his contention that he raised the Federal question at the first opportunity is without substance and the appeal must be dismissed for want of jurisdiction."

The instant action was commenced with the filing of a complaint in the Superior Court of Vanderburgh County on September 30, 1940 (Rec. p. 1, line 20). The cause was tried on January 17, 18 and 20, 1941, and the trial court rendered its decision on February 18, 1941.

On November 25, 1940, after this cause was filed, but before trial, the Supreme Court of Indiana decided the case of Long et al. v. Van Osdale et al., 218 Ind. 483, 29 N. E. (2d) 953. In its opinion the Supreme Court of Indiana holds that a labor union retains the right to change its contract with a railroad even though the seniority rights of the individual members of the union are affected by the change. In delivering the opinion Judge Fansler uses the following language on pages 954 and 955 of the Reporter:

"The appellants were plaintiffs below. They are 265 in number and are employed by the Pennsylvania Railroad Company as locomotive engineers. 268 of the appellees are employed by the Pennsylvania Railroad Company as locomotive engineers and are members of a labor organization known as the Brotherhood of Locomotive Engineers. The remaining appellees are the Pennsylvania Railroad Company and certain officers of the Brotherhood of Locomotive Engineers. The controversy involves the respective seniority rights of the two groups of employees. * * *

"It is alleged that, while the agreement above referred to was in force, the Engineers' Committee, acting through its chairman, and without authority of the plaintiffs, entered into an agreement with the Railroad Company consolidating the engineer Seniority Rosters for the Fort Wayne Main Line Road and

the Fort Wayne and Lima Yards, by ranking all engineers in the order of their employment; in other words, by dovetailing; that this agreement injuriously affects the seniority rights of the plaintiffs; that the Railroad Company and the General Chairman of the General Committee of Adjustment of the Brotherhood of Locomotive Engineers threaten and intend to put the new schedule agreed upon in effect. The complaint prays that this latter agreement be declared void, and that an injunction be issued to restrain its being put into effect. Demurrers to the complaint were sustained, and, the plaintiffs having refused to plead further, there was judgment for the defendants. * * *

"Appellants' complaint is that their status has been changed, but the contract, upon which their seniority rights are founded, contemplated the possibility of a change that would affect those rights, set up agencies with authority to agree to changes, provided for an appeal by the individuals affected, and established an agency for final review and final determination of all questions that might arise. The appellants allege that they acquiesced in and accepted the benefits of the contract. In so doing they must be deemed to have accepted the burdens and conditions also.

"The Appellate Court of Illinois recently considered the rights of engineers under the identical contract here involved, in a case in which the complaint was substantially the same as in the case at bar. It reached the conclusion that the 'reservation of authority was binding upon the beneficiary to this contract and that the Committee had full authority to represent them.' It concluded that the bill of complaint should be dismissed for want of equity. The terms of the contract will be more fully disclosed by an examination of that opinion; and the authorities there cited and relied upon sustain the views here expressed. See Evans et al. v. Johnston et al., 1939, 300 Ill. App. 78, 98, 20 N. E. 2d 841, 847. Petition for leave to appeal denied by Supreme Court of Illi-

nois, 301 Ill. App. xxii. Petition for certiorari denied, February 12, 1940, 309 U. S. 662, 60 S. Ct. 582, 84 L. Ed. 1010."

The case of Evans v. Johnson, supra, which is cited, approved, and relied upon by the Supreme Court of Indiana in the above quoted decision, has been previously cited herein. In discussing the right of a labor union to change its contract with a railroad even though the change affected the seniority rights held by individual members of the union, the Appellate Court of Illinois said:

> "The transaction is an agreement between an employer and a labor union designed by the latter to benefit itself and those members who enter the employer's service. The employee stands no higher than the union. If it modifies the agreement with the employer, the employee must acquiesce. In no correct sense is the union an agent; it is a principal.
>
> "It seems to us that where a labor union, composed of employees of a company, whether the objector is a principal or an employee of a certain company, where the rights of the employees are in the hands of the union for the purpose of settling disputes or adjustments of their rights, or have under consideration collective bargaining of any kind, that when an agreement is made, no fraud having been shown, it is to be presumed that they have had a fair hearing before their union committees and presented their side. Under these circumstances the employees would be bound by the actions of the officers of their union."

The Supreme Court of the United States denied certiorari in that case on February 12, 1940, so that, prior to the time when the trial court rendered its decision in the instant case, the Supreme Court of Indiana, the Appellate Court of Illinois and the Supreme Court of the United States had passed directly upon the issues presented by petitioners' complaint and respondents' answer.

The decision of the Supreme Court of Indiana followed

a long line of decisions on this question which were, and are, not only the weight of authority but were, and are, the sole authority. There are no decisions of courts of last resort holding to the contrary.

The general and well-recognized rule is clearly stated in the case of Aulich v. Craigmyle, 59 S. W. (2d) 560. Craigmyle was a telegraph operator who worked for the L. & N. Railroad and was a member of the Order of Railway Telegraphers, whose constitution and by-laws were very similar to that of the Brotherhood of Railroad Trainmen. He brought this action to prevent interference with seniority rights which he claimed. The Court of Appeals of Kentucky in passing on this question said, on page 563 of the Reporter:

> "The members of the Railroad Telegraphers Union possessed the absolute right to formulate and adopt such constitution and by-laws as they deemed proper to accomplish the purpose of the organization. Being a voluntary association, its constitution and by-laws become a part of the obligations entered into by a member when he joins. In a controversy between a member and the association, the remedies lie within the organization, and as a general rule they must be exhausted before an appeal by a member to the courts (citing cases). The general applicable rules in such cases were formulated and stated in Roxbury Lodge v. Hacking, supra; Walsche v. Sherlock, 110 N. J. Eq. 223, 159 Atl. 661. It is not within the province of the court to inquire into and determine the expediency, practicability, or wisdom of the constitution and by-laws of the Order of Railroad Telegraphers, nor to relieve its members of the operation or enforcement thereof, so long as they do not violate, trespass upon, or destroy the property or contractual right of its members, or transgress the bounds of reason, or contravene public policy or the laws of the land. In connecting himself with the organization, Craigmyle subjected himself fully and completely to the power of its administration, within the legal limits of the power

of the organization. On becoming a member thereof his right of seniority was controlled thereafter by its by-laws which were at that time in force or thereafter adopted (citing cases). His right to seniority before becoming a member of the organization was subject to the right of adoption, or discretion, of the railroad company to recognize it or not. His right thereto prior to his return to the Cincinnati Terminal was in no sense a vested, contractual or property right, justifying the court, either then or now, in interfering to preserve it" (citing cases).

The following additional authorities follow this rule, most of which are cited and quoted by the Supreme Court of Indiana in decision in the case at bar:

Brotherhood of Railroad Trainmen v. Williams (1925), 277 S. W. 500 (Ky.);

Shaup v. Brotherhood of Locomotive Engineers (1931), 135 So. 327 (Ala.);

Aulich v. Craigmyle (1933), 59 S. W. (2nd) 560 (Ky.);

Maloney v. United Mine Workers (1932), 162 Atl. 225 (Pa.);

Brotherhood of Locomotive Engineers v. Simpson (1929), 98 S. E. 580 (W. Va.);

Crutcher v. Order of Railway Conductors (1910), 132 S. W. 307 (Mo.);

Evans et al. v. Johnston et al. (1939), 20 N. E. (2nd) 841 (Ill.);

5 C. J. 1364, Par. 101;

7 C. J. S. 80, Par. 34;

Brotherhood of Railroad Trainmen v. McMurray (1931), 50 Fed. (2nd) 968 (D. C. Pa.);

Brotherhood of Railroad Trainmen v. McMurray (1934), 54 Fed. (2nd) 923 (3rd C. C. A.);

Burger et al v. McCarthy (1919), 109 S. E. 492 (W. Va.);

Donovan v. Travers (1934), 188 N. E. 705 (Mass.);

Long v. Van Osdale (1940), 29 N. E. (2nd) 953 (Ind.).

It is clear that there was nothing new or unexpected in the decision of the Supreme Court of Indiana in the instant case, and under the holding of this court in Herdon v. State of Georgia, supra, and the cases cited therein, petitioners have failed to bring themselves within the exception to the general rule. The presentation of a claimed Federal question for the first time in the petition for a rehearing before the Supreme Court of Indiana was not seasonable, and certiorari therefore should be denied.

(c) **No property or civil rights are involved in this case and therefore no Federal question is presented by the petition.**

(d) **A voluntary unincorporated association, such as the Brotherhood of Railroad Trainmen, may adopt a constitution and by-laws for the government of its members which are controlling in all internal affairs of such an association so as to settle disputes between members, or questions of policy, discipline, or internal government, so long as the government of the association is fairly and honestly administered in conformity with its laws and the laws of the land and no property or civil rights are involved.**

Respondents will discuss these two points together because they have uniformly been considered as corollaries of each other by the courts.

Petitioners assert that the judgment and opinion of the Supreme Court of Indiana in the case at bar violates that portion of Section I of the Fourteenth Amendment of the Constitution of the United States, which reads as follows, to wit:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law."

This necessarily presupposes that petitioners have some property. Petitioners assert that the seniority which they

held under the contract between the Brotherhood of Railroad Trainmen and the Louisville and Nashville Railroad was property which could not be taken away from them without due process of law, but the courts, without exception, have held that seniority held by virtue of a union contract, although of some value, is not such a property right as would warrant or justify the interference of a court of law or equity to preserve it.

When a person makes application and becomes a member of a voluntary unincorporated association he enters into a compact with all members of the association to be bound by and submit to the constitution, by-laws, and general rules, and to abide by the decision of the duly constituted tribunals in all internal matters of the association, and the courts will not interfere with the regular and lawful administration of the laws of the association or the decisions of the duly constituted tribunals of the association.

Seniority is a right held by a member of a labor union solely by virtue of his membership in the union. It is an internal affair of the union, subject to change at any time by the union, and subject to review at all times by the duly constituted tribunals of the union or association. An employee of a railroad who is a member of a labor union, such as the Brotherhood of Railroad Trainmen, stands no higher than the union, and, if the union modifies an agreement with his employer, the employee must acquiesce in the modification. The union is not an agent. It is a principal. The courts will not interfere with the internal affairs of a voluntary, unincorporated association so as to settle disputes between members, or questions of policy, discipline, or internal government, so long as the government of the association is fairly and honestly administered in conformity with its laws and the laws of the land and no property or civil rights are involved.

In the case of Donovan v. Travers, 285 Mass. 167, 188 N. E. 705 (Mass. 1934), the Supreme Judicial Court of Massachusetts discussed these questions as follows:

> "The substantial issue is whether the rights of the plaintiffs are fixed by the terms of the agreement between the union and the railroad as it stood when the several plaintiffs entered upon their service interpreted only in the light then available: or whether, as the agreements changed from time to time, the modifications and possible changes in interpretation of terms agreed upon by the union and the railroad modified and affected the individual contracts of those already in the railroad's employ. We think the latter to be the proper position. The transaction is an agreement between an employer and a labor union designed by the latter to benefit itself and those members who enter the employer's service. The employee stands no higher than the union. If it modifies the agreement with the employer, the employee must acquiesce. In no correct sense is the union an agent. It is a principal. See Whiting Milk Companies v. Grondin (Mass.), 184 N. E. 379. * * *
>
> "A controversy over the respective rights of employees at work in the yards at Lawrence and Peabody in contradistinction to the rights of those formerly employed in the abandoned yard at Lynn was, properly, presented to the general grievance committee for its decision. The correct determination depended upon the construction to be given article 2 of the agreement between corporation and brotherhood. It is settled law that members of an unincorporated, voluntary association, like the brotherhood, are bound by the determination of the association's tribunals if the decision is reached after observance of the formalities it prescribes, after fair opportunity for presenting their case, where there has been no excess of jurisdiction, no bad faith or capricious, unreasonable or arbitrary action. Richards v. Morison, 229 Mass. 458, 461, 118 N. E. 868. * * *

"Although a right of seniority such as is here asserted is undoubtedly a valuable property, it arises only from agreement. We see no illegality in a rule that one who acquires seniority in a particular place and who is entitled to carry it with him to another, must reckon seniority in that other place from the time at which the right to its exercise in that other place accrued to him. One is not deprived of property thereby."

The Supreme Court of Alabama decided the same question in 1931 in the case of Shaup v. Brotherhood of Locomotive Engineers, 135 So. 327. The court in its opinion said on page 328 of the Reporter:

"The facts alleged are incompatible with any charge of fraud or unfair or arbitrary ruling, and no such charge is made, but they show only a construction of the rules of the order upon a matter as to which an honest difference of opinion may well appear to exist. But the courts are indisposed to interfere with the internal management of such organizations, and do not grant relief under such circumstances. Grand International B. of L. Engineers v. Green, 210 Ala. 496, 98 So. 569, 572. As said by the West Virginia Court, Simpson v. Grand International B. of L. Engineers, 83 W. Va. 355, 98 S. E. 580, 587: 'The construction of the organic agreement, by-laws, rules and regulations of a benefit society or other unincorporated voluntary association belongs, not to the court, but to the board, council, or other tribunal provided for the purpose in the organization, if any. So long as the body upon which this power of interpretation has been conferred does not substitute legislation for interpretation, nor transgress the bounds of reason, common sense or fairness, nor contravene public policy or the laws of the land, in their conclusions and decisions, the courts cannot interfere with them. * * *'

"The facts stated in the bill only show an interpretation of the rules of the order by lawful authorities in

good faith and in consonance with sound reasoning. The seniority rights of complainant were by virtue of agreement between the brotherhood and the railway company, and it would seem subject to be vacated by mutual consent; either party having the right to withdraw therefrom on thirty days' notice. As said by the court in McMurray's Case, supra, this right is therefore 'somewhat intangible' and it is quite clear such seniority right did not create such a vested property right as to justify the interference of a court of equity. * * *

"The bill is also defective in failing to disclose that complainant had first exhausted all remedies within the brotherhood before resorting to the courts (citing authority). The chancellor sustained the demurrer and dismissed the bill, upon the theory that it contained no amendable defect (citing authority). We are in accord with that view, as complainant's case comes within the rule of noninterference by the courts in internal management of such voluntary associations."

Other cases following this general rule are numerous. The leading ones are:

Brotherhood of Railroad Trainmen v. Williams (1925), 277 S. W. 500 (Ky.);

Shaup v. Brotherhood of Locomotive Engineers (1931), 135 So. 327 (Ala.);

Aulich v. Craigmyle (1933), 59 S. W. (2nd) 560 (Ky.);

Maloney v. United Mine Workers (1932), 162 Atl. 225 (Pa.);

Brotherhood of Locomotive Engineers v. Simpson (1929), 98 S. E. 580 (W. Va.);

Crutcher v. Order of Railway Conductors (1910), 132 S. W. 307 (Mo.);

Evans et al. v. Johnston et al. (1939), 20 N. E. (2nd) 841 (Ill.);

5 C. J. 1364, Par. 101;

7 C. J. S. 80, Par. 34:

Brotherhood of Railroad Trainmen v. McMurray (1931), 50 Fed. (2nd) 968 (D. C. Pa.);
Brotherhood of Railroad Trainmen v. McMurray (1934), 54 Fed. (2nd) 923 (3rd C. C. A.);
Burger et al. v. McCarthy (1919), 109 S. E. 492 (W. Va.);
Donovan v. Travers (1934), 188 N. E. 705 (Mass.);
Long v. Van Osdale (1940), 29 N. E. (2nd) 953 (Ind.).

(e) **There was a judicial determination of the questions involved by a court of competent jurisdiction.**

In passing upon the issues presented by petitioners' complaint and respondents' answer thereto, the court had to decide two questions. First, the court had to determine whether or not petitioners had a full and complete hearing before the tribunals of the Brotherhood of Railroad Trainmen, and whether or not the laws of the Brotherhood had been fairly and honestly administered. Second, it was necessary for the Court to determine whether or not petitioners had some property right which would justify the interference of a court of law or equity even though petitioners had a full and fair hearing before the tribunals of the Brotherhood.

Petitioners had ample opportunity to present their evidence on these questions to the trial court, and did. The trial court passed upon these two questions in rendering its decision in this case. Upon appeal to the Supreme Court of Indiana, the same two questions were presented; in fact, they were the only questions presented to that Court.

The Supreme Court of Indiana passed squarely upon both questions. In answering the first question the Court said:

> "The controversy involves nothing more or less than a construction of the constitution and laws of the

brotherhood and a determination of the jurisdiction of the board of directors, the board of appeals, and the grand lodge. The appellees contend that seniority rights are property rights, and that courts will interfere in the activities of voluntary associations in order to protect property rights. The seniority rights arose out of, and by virtue of, an agreement between the brotherhood and the railroad company. Whatever seniority the appellees enjoy vests in them by virtue of their having become members of the brotherhood. The rights are granted to them as members subject to the condition that they comply with the rules of the brotherhood, and that the right to seniority as between the members of the brotherhood shall be determined under the laws of the brotherhood. See Shaup v. Grand International B. of L. Engineers et al. (1931), 223 Ala. 202, 135 So. 327" (Rec. p. 101).

In discussing the second question the Supreme Court of Indiana said:

"In Simpson v. Grand International B. of L. Engineers (1919), 32 W. Va. 355, 373, 98 S. E. 587, it is said: 'The construction of the organic agreement, bylaws, rules and regulations of a benefit society or other unincorporated voluntary association belongs, not to the court, but to the board, council or other tribunal provided for the purpose in the organization, if any. So long as the body upon which this power of interpretation has been conferred does not substitute legislation for interpretation, nor transgress the bounds of reason, common sense or fairness, nor contravene public policy or the laws of the land, in their conclusions and decisions, the court cannot interfere with them.' And it was said by the same court in State ex rel. Smith v. County Court (1916), 78 W. Va. 168, 172, 88 S. E. 662, 664, 20 A. L. R. 1030, 1033: 'The right of a voluntary association to interpret and administer its own rules and regulations is as sacred as is the right to make them, and there is no presumption against just and correct action or conduct on the

part of its supervising or appellate authorities and tribunals. On the contrary, the presumption is in favor of it. In connecting himself with the organization, a member subjects himself as fully and completely to the power of administration, within legal limits, as to the power of legislation or prescription. To say courts can make rules and regulations for such associations would be absurd and ridiculous. To say they may interpret and apply them, in view of the powers reserved to, and exercised by, the governing bodies of the association, would be as plainly subversive of contractual right.' These cases and many others are discussed and cited in Shaup v. Grand International B. of L. Engineers et al., supra.

"In Harris v. Missouri Pac. R. Co. et al. (1931), 1 Fed. (fol. 411) Supp. 946, 949, 950, the court said, after reviewing the facts and the contentions of the parties and the principles involved, which were substantially like those in the case under consideration: 'The organization, by its constitution and by-laws, had constituted officers and tribunals to pass upon these questions of order and procedure, and they were duly passed upon by such duly constituted officers and tribunals. These were strictly questions of interpretation and construction of the constitution and by-laws of the union. That the courts will not review the correctness of the interpretation fairly placed upon the constitution and by-laws of a voluntary association by its duly authorized tribunals, particularly where only a procedural or jurisdictional question is involved, seems to be the settled rule.' The authorities cited and those we have referred to support the conclusion in which we must concur" (Rec. pp. 102-103).

Petitioners have had a full and complete hearing before the duly constituted tribunals of the Brotherhood of Railroad Trainmen. They have had a full and complete judicial determination of the issues presented by the pleadings, by a court of competent jurisdiction, which judicial

determination has been reviewed and passed upon by the Supreme Court of Indiana, the highest tribunal in said State.

No property has been taken from petitioners, and they have had due process of law. The decision of the Supreme Court of Indiana follows a long line of decisions by the courts of last resort of almost every State in the United States, all of which have uniformly followed the same rule. The decision of the Supreme Court of Indiana rests upon adequate nonfederal grounds.

CONCLUSION.

Certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 148

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,

For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties,

Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and JAMES DUVALL,

for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,

A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen,

Respondents.

REPLY BRIEF.

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Evansville, Indiana,
September 25, 1942.

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Respondents.

REPLY BRIEF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petitioners for reply to the brief of the respondents in opposition to the petition for writ of certiorari herein, respectfully submit the following:

I.

Replying to II of respondents' brief, page 2 thereof, respondents question the jurisdiction of the Supreme Court of the United States in this cause to pass upon the within petition for writ of certiorari, and make five specific statements. The same will be answered herein under *"Reply to Respondents' Argument."*

II.

Respondents under III of respondents' brief, page 3 thereof, denominated "Additional Statement of the Case" state that in petitioners' original brief in this court under this heading, are comments and innuendoes which are incorrect. Replying to this assertion:

First the respondents question petitioners' claim of exclusive seniority rights in the Louisville and Nashville yards in Evansville, Indiana. It is true that the Yard was not a closed shop in the sense that it was necessary to belong to the Brotherhood of Railroad Trainmen, however only two or three did not belong. See testimony of N. E. Lane (Rec. p. 38). But the Yard is closed to all who do not have seniority with the Louisville and Nashville Railroad Company by virtue of the often referred to collective labor agreement of that railroad with its workmen. See testimony of N. E. Lane (Rec. pp. 39, 40). The fact remains that this is a class action maintained by the petitioners in behalf of all workmen who are employed by the Louisville and Nashville Railroad Company in the same capacity and who hold the right to work in the Louisville and Nashville yards to the exclusion of all others.

Next, respondents question an assertion in petitioners' brief that respondents had acquiesced in the decision of

the Board of Appeals of the Brotherhood of Railroad Trainmen, dated May 5th, 1938 (Rec. p. 70). The facts are that from that date forward, not one single thing was done by the respondents to question said decision until June, 1939 (Rec. p. 63). Petitioners feel fully warranted in interpreting respondents' conduct as acquiescing in the decision of the Board of Appeals, whose jurisdiction they had also invoked. See statement filed by Vice-president Zanger with Board of Appeals, April 2nd, 1938 (Rec. pp. 69, 70).

At the top of page 5 of their brief, respondents assert that the Grand Lodge of the Brotherhood of Railroad Trainmen is the supreme governing body of that organization, and therefore the action of that body reversing the decision of the Board of Appeals was not *ultra vires* and void. This statement cannot possibly be true, for before this controversy had arisen, the Grand Lodge had, by constitutional amendment, abrogated its broad powers, and had created the Board of Appeals and had delegated to it and vested it with final jurisdiction and authority to pass upon such questions as are here presented by this dispute between two groups of members. See Constitutional Provisions, sections 15a and 15b. (Rec. p. 30-31.) Specifically, the Constitution provides that *"Such decisions* (of Board of Appeals) *shall be the final adjudication of any and all rights and questions included in the appeal."* It is not possible that two bodies or tribunals be so vested with final authority.

Upon page 8 of respondents' brief, the implication is made that there had been a merger of the Louisville and Nashville Railroad Company and the Chicago and Eastern Illinois Railway Company. That is not true. There was no merger of these two railroads in any sense. Rather,

the Chicago and Eastern Illinois Railway Company, after the closing of their station upon July 13th, 1935, merely thereafter availed themselves of the facilities of the Louisville and Nashville Railroad Company under a rental agreement.

Reply to Respondents' Argument.

The petitioners will reply to the points of the argument of respondents' brief in their exact order.

Point I.

(a)

Respondents make the bold assertion that the Supreme Court of the United States has previously denied certiorari in an action which presented the same questions of law. Respondents base their assertion upon the case of *Evans, et al.* v. *Johnson, et al.* (Ill. App.) 20 N. E. 2nd 841, in which a petition for writ of certiorari was denied by the Supreme Court of the United States, 309 U. S. 662; 60 S. Ct. 582; 84 L. Ed. 1010. Manifestly, respondents are in error in making this brazen statement. If respondents had examined the proceedings of this case in the Supreme Court of the United States, where it was Cause No. 636 in the October Term, 1939, respondents could have determined that this cause was not submitted to the Supreme Court of the United States upon any question bearing any similarity to any question here presented by petitioners application for a writ of certiorari. The *Evans* case above referred to, was presented to the Supreme Court of the United States solely for a decision upon a question involving the interpretation of the National Railway Labor Act of 1926, as amended in 1934. No other questions were presented. This Court will of course take judicial notice of the pleadings and briefs in the *Evans* case.

(b)

Respondents assert that the question involved in the decision of the Supreme Court of Indiana was not new or unexpected, and therefore, the presentation of a federal question by petition for re-hearing came too late. Anticipating the position of respondents in this respect, the petitioners in their brief in support of their petition for a writ of certiorari herein, fully stated their position in this respect at pages 2 to 6 thereof.

Respondents say there is nothing unexpeeted about a decision that is based upon a prior decision of the same court, and refer to the case of *Long, et al.* v. *Van Osdale, et al.*, 218 Ind. 483, 29 N. E. 2nd, 953, decided by the Supreme Court of Indiana prior to the decision in the case at bar. True it is, that in the *Long* case just referred to, the Supreme Court of Indiana approves the decision of the Illinois Appellate Court in the *Evans* case, herein previously discussed, *but it is important here to note that in this case, the Supreme Court of Indiana in its written opinion, failed to refer to a decision in the case of Long, et al.* v. *Van Osdale, et al., supra, or to the Illinois case of Evans, et al.* v. *Johnson, et al., supra.* Admittedly, the Supreme Court of Indiana did not consider the *Long* case as decisive of any question here presented.

It is further interesting to note that the respondents fail to dispute that a federal question is now involved, namely, the denial of due process of law as guaranteed by the Federal Constitution. They urge the merits of their defense to petitioners' original cause of action, but they fail to deny to the petitioners the right to seek redress in court for the protection of their rights secured them by a collective labor agreement with their employer, and further secured to them by their membership in the Brotherhood of Railroad Trainmen.

Upon page 22 of their brief herein at the top of said page, respondents state that the decision of the Supreme Court of Indiana was decided in line with the great weight of authority, and add: "There are no decisions of the courts of last resort holding to the contrary." For answer to this assertion, petitioners refer to the decisions and authorities cited under Points B, C, D and E of their brief herein, at pages 15 to 31 thereof, and also to call the attention of this Court to the case of *Allen, et al.* v. *The Southern Pacific Co., et al.* (1941) (Ore.) 110 P. 2nd, 933. In said case, two groups of members of the Brotherhood of Railroad Trainmen were involved in a dispute over seniority rights and the right to follow certain work where there had been a change in train service. This controversy had been submitted to the Board of Appeals of the Brotherhood of Railroad Trainmen for decision as in the case at bar. The Board of Appeals entered a decision sustaining the position of the appellants, and appellees sought to reverse the same in the courts of Oregon. The Supreme Court of that state in a thorough, well-written opinion, made the following comments:

> "From these provisions of the constitution and rules of the Brotherhood, it is clear that the board of appeals, which is the court of final resort in the Brotherhood, had undoubted authority to decide the appeal taken from the action of the sub-committee and that its decision upon all the questions presented upon that appeal was final and conclusive upon all the members of the organization and particularly upon these plaintiffs. Under that decision, the agreement of August 4, 1927, was declared by the highest authority existing in the Brotherhood to be in full force and effect and to be a final determination of the seniority rights of all Portland division trainmen to man trains on the Shasta division.

"It is clear from the various provisions of the constitution and general rules above referred to that the Brotherhood, through its various committees and tribunals, provides an exclusive method of settling all grievances and disputes between its members, including the settlement of their respective seniority rights, and that, in respect to all said matters, the board of appeals is the court of last resort whose decisions are final and conclusive upon all its members. See *Cannon* v. *Brotherhood of Railroad Trainmen,* 262 Ky. 113, 89 S. W. 2d 620, and authorities there cited. The constitution expressly provides: 'Such decision (of the board of appeals) shall be the final adjudication of any and all rights and questions included in the appeal.'

" 'It is settled law,' said the court in *Donovan* v. *Travers,* 285 Mass. 167, 188 N. E. 705, 708, 'that members of an unincorporated, voluntary association, like the brotherhood, are bound by the determination of the association's tribunals if the decision is reached after observance of the formalities it prescribes, after fair opportunity for presenting their case, where there has been no excess of jurisdiction, no bad faith or capricious, unreasonable or arbitrary action. *Richards* v. *Morison,* 229 Mass. 458, 461, 118 N. E. 868.' "

It is important that petitioners clearly state their position. They do not contend that under their plan of work or the constitution of the Brotherhood of Railroad Trainmen, that courts have the right to determine their seniority. This, they have contracted, is to be decided by the tribunals of the Brotherhood. But they do earnestly contend that the courts have the right to decide, and should, where called upon, determine whether the authority to determine their rights of seniority, the right to work, is within the Board of Appeals of their organization, or with the Grand Lodge, sitting in convention. They have a

right to seek redress in court to have the benefit of their favorable decision obtained before the Board of Appeals of the Brotherhood of Railroad Trainmen, which the Supreme Court of Oregon has properly held is the supreme tribunal of this organization in matters referred to it for decision.

(c) and (d).

Respondents say that there is no property or civil right involved in this cause of action. Are the rights asserted by petitioners property rights? Indiana courts have so held. See *Abdon* v. *Wallace* (1933), 95 Ind. App. 604; 165 N. E. 68. (Petition to transfer to the Supreme Court of Indiana denied.) Certainly petitioners' right to file a cause of action and to a judicial determination of that cause of action predicated upon the rights secured them by their membership in the Brotherhood of Railroad Trainmen is a vested property right. From the standpoint of a workman, a sorry picture is here presented of a gigantic labor organization seeking a favorable decision in this particular case, contending that the very things secured a workman by his membership, justifying the existence of the organization, are not property rights. The rights the petitioners have involved in this cause are not confined to their right of seniority. They have the right to work under certain favorable conditions. They have the right to all the benefits due them under the collective labor agreement with the Louisville and Nashville Railroad Company. They also have the right to the benefits and privileges gained them by their membership in the Brotherhood of Railroad Trainmen, which includes the right to insist, in a court of equity, upon the enforcement of the rights they have gained through a favorable decision of the Board of Appeals of that organization.

As a corollary to the above proposition urged by respondents, they insist that courts will not interfere in the inter-

nal affairs of the union. The statement of the following elementary rules fully answers respondents' position in this respect:

1. A member of a labor organization is bound by its constitution and by-laws. In this case, this applies to both respondents and petitioners, as they are all members.

2. Labor organizations have the right to provide for the settlement of disputes between its membership and the decision of tribunals so constituted are fully binding upon the members.

3. Such decisions, when fairly and reasonably made, are binding upon the courts.

4. Courts will not pry into the internal affairs of a union to determine the merits of a controversy where such controversy should be settled and decided by the tribunals of that organization, but:

5. Courts will exercise their jurisdiction to prevent abuses, and to protect individuals from the *ultra vires* acts and unauthorized assumption of power and authority by arbitrary leaders or others.

In this cause of action, the petitioners have gained a favorable decision before the Board of Appeals of the Brotherhood, and have a valid right to invoke the protection of a court in the State of Indiana to protect them from the enforcement of the *ultra vires* action of the Cleveland Convention, which attempted, without authority to reverse the Board of Appeals. If the petitioners have no right to seek redress in court under these circumstances, then they have gained nothing by their membership in this organization. They are subject to the arbitrary wishes

of the leaders. Organized labor in this country cannot long prevail if the individual members surrender all rights when they become affiliated with such an organization. Nor will the great benefits workers have secured through organized labor long endure if unions are to be run on the pattern of the dictators. The courts of this country must be open to individual union members, there to seek redress and protection against the invasion of their rights by the arbitrary, *ultra vires* acts of the union itself.

(e)

Respondents assert that there was a judicial determination of the questions here involved by a court of competent jurisdiction. The sum and substance of the opinion and decision of the Supreme Court of Indiana (Record pp. 98 to 103), is that they have decided that they will not decide this cause of action. This constitutes a refusal to accord to the petitioners a judicial determination of this cause of action. Upon the authority of the Indiana case of *Abdon* v. *Wallace, supra,* the petitioners had a cause of action. This necessarily carried with it a right to have that cause of action judicially determined. True, petitioners had a day in court, and an opportunity to present their evidence in an orderly fashion, but all this was idle procedure. Upon the authority of the opinion of the Supreme Court of Indiana in this cause of action, there was nothing to decide. The Brotherhood of Railroad Trainmen is made an entity all apart, not subject to any judicial interference. In the petition herein, and in the brief in support thereof, the petitioners have shown that the opinion of the Supreme Court of Indiana recognizes that this cause was not submitted upon the questions upon which the cause was there decided. The petitioners again call the attention of this court to the great importance and moment of the questions here presented. Labor unions

having come to play an increasingly important part in our economic structure, should not be permitted, in their own interests, to grow beyond the reach of the judiciary, and this statement is submitted on behalf of the petitioners, who are workmen, a part of the organized labor movement, and who are desirous that the progress of the labor movement be not impeded by situations such as presented in this cause of action.

The petitioners respectfully urge that they have presented a meritorious petition for writ of certiorari in this cause, and have supported the same by authority. They respectfully urge that the writ herein prayed shall issue out of and under the seal of this Court, directed to the Supreme Court of the State of Indiana, to the end that the judgment of the Supreme Court of Indiana may be reviewed and reversed by this Honorable Court.

Respectfully submitted,

CARLOS J. MILLER,
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HOMER SHELTON,

For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by said Railroad Company in the Same Capacity as the Named Parties.

Petitioners.

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Dated at Evansville, Indiana,
September 25th, 1942.